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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE AND J. S. McFERREN, PARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF MOORE & McFERREN, APPELLANTS,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED MARCH 14, 1906.

(20,127.)

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1 Be it remembered that on the second day of November, 1899, came into the Clerk's office of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, William Moore and J. S. McFerrin, partners doing business under the firm name of Moore and McFerrin by Myers and Banks and D. E. Myers, and Rose, Hemingway and Rose, Esqs., their solicitors, and filed in said Court on the Chancery side thereof their original bill of complaint against said R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and Hubert B. Wilson which bill of complaint is in the words and figures following, to-wit:

In the Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERREN, Partners, Doing Business under the Firm Name of Moore & McFerren,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Arkansas, in the Western Division thereof:

Your orators, William Moore and J. S. McFerrin, both citizens and residents of the State of Illinois, partners doing business under the firm name of Moore & McFerrin which firm has a large lumber business in Memphis, Tennessee, bring this, their bill, against the defendants R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, Hubert B. Wilson and C. L. Jones, Jr., all of whom are residents of the State of Mississippi, with the exception of C L. Jones, Jr., and Hubert B. Wilson, who are either citizens and residents of the State of Arkansas or of the State of Mississippi, one or the other.

And thereupon your orators complain and say that the Complainants herein are the owners in fee and in possession of the following lands, lying and being in the County of Desha, and State of Arkansas, in the Western Division of the Eastern District of Arkansas, to-wit:—Southeast fractional quarter Section thirty-five, about 79 4/100 acres; North fractional half of Section thirty-six,

2 about 82 72/100 acres; east half of Southwest quarter of Section thirty-six, eighty acres; Southeast fractional quarter of Section thirty-six, about twenty-six and ninety-six-one hundredths acres; all in Township eleven South, Range one east of the fifth principal Meridian and also North-east fractional quarter of Section one, about seven and eighty-nine-one hundredths acres; Northwest fractional quarter of Section one, about one hundred and thirty-seven and thirty-eight-one hundredths acres; Southwest fractional quarter of Section one, about ten and fifty-six one hundredths

acres; North fractional half of Northeast fractional quarter, Section two, about sixty-five and fourteen one hundredths acres; Southeast fractional quarter and South half of Northeast quarter of Section two, one hundred and sixty and nine one hundredths acres.

All in Township twelve, Range one East, of the principal meridian, comprising what is know as Island 76 in the Mississippi River, and that said real estate and appurtenances is of value over Five Thousand Dollars.

Your orators would further represent unto your Honors that they are the owners in fee of said various desc-ibed tracts of land, including and embraced in Island 76, in the Mississippi River, and that they own the same by the following muniments of title, among others to be produced, to-wit:—

On or about June 23rd, 1847, the Southeast fractional half of Section thirty-five, Township eleven, Range one East, seventy-nine and four one hundredths acres was brought and entered at the Land office of the United States at Helena, Arkansas, by Joe Dempsey, then a citizen of the State of Arkansas, his certificate of purchase being # 5029.

That on June 23rd, 1847, the North fractional half of Section thirty-six, Township eleven South, Range one East, eighty-two and seventy-two one hundredths acres, was bought and entered at the United States Land office at Helena, Arkansas, by George S. Crane, by certificate of purchase # 5030, and said George S. Crane was then a citizen of the State of Arkansas.

That on July 27th, 1847, the East half of the Southwest quarter of Section thirty-six, Township eleven South, Range one East, eighty acres, was bought and entered at the United States Land office then in Helena, Arkansas, evidenced by certificate
3 # 671-C in favor of Oh-Us-Sis, who was then a resident and perhaps a citizen of the State of Arkansas.

That on July 17th, 1847, the Southeast fractional quarter of Section thirty-six, Township eleven, South, Range one East, twenty-six and ninety-six one hundredths acres was bought and entered at the United States Land Office at Helena Arkansas, by George Jefferies, evidenced by certificate # 5147.

That on July 17th, 1847, the Northeast fractional quarter of Section one, Township twelve, Range one East, seven and eighty-nine one hundredths acres was bought and entered at the United States Land Office at Helena, Arkansas by John R. Wilkinson, evidenced by certificate # 5143.

That on July 17th, 1847 by certificate # 5144, John R. Wilkinson bought and entered at the United States Land Office at Helena, Arkansas the Northwest fractional quarter of Section one, Township twelve South, Range one East, one hundred and thirty-seven and thirty-eight one hundredths acres.

That on July 17th, 1847, by certificate of purchase # 5145, John J. Lovin bought and entered at the United States Land Office at Helena, Arkansas, the Southwest fractional quarter of Section one, Township twelve South, Range one East, ten and fifty-six one hundredths acres.

That on July 17th, 1847, by certificate of purchase # 5146, John

J. Lovin bought and entered at the United States Land Office at Helena, Arkansas, the North fractional half of the Northeast quarter of Section two, Township twelve, Range one East, sixty-five and fourteen one-hundredths acres.

That on July 10th, 1847, by certificate of purchase # 5078 in the United States Land Office at Helena, Arkansas, John J. Lovin bought and entered the Southeast fractional quarter and South half of Northeast fractional quarter of Section two, Township twelve, Range one East, one hundred and sixty and nine one hundredths acres.

The foregoing and above entries and purchases from the United States Government constitute the whole of Island 76 in the Mississippi River, as your orators understand.

A duly certified copy and transcript of the records of the United States Land Office at Little Rock, Arkansas, showing the above entries and purchases, is herewith filed and marked "Exhibit A" and prayed to be taken as a part hereof.

4 Your orators further state and represent that the records of these sales made and formerly kept at Helena, Arkansas, were transferred to Little Rock, Arkansas, and are now in the land office there, as they are informed and believe and charge that each and every of said tracts were sold by the United States to the parties aforesaid at the dates aforesaid.

Your orators further represent in regard to a small portion of said Island 76, to-wit: the Southwest fractional quarter of Section two, containing about thirty-two and ninety-two one hundredths acres, being forfeited to the State of Arkansas for taxes, and also claimed under the Swamp Land Act of the United States Government, was on October 29th, 1890 sold and conveyed by the State of Arkansas to one John Evans, a citizen of the State of Arkansas, which is evidenced by a deed of Date October 29th, 1890, by the State of Arkansas, a copy of which is herewith filed and marked "Exhibit B" and made a part hereof, and the original will be produced on or before the hearing if required and is of record in Record Book A A, Page 134 in the Register's Office of Desha County, Arkansas.

Your orators would further represent that under a deed, dated October 10th, 1892, the said Joe Evans and his wife, Mary Evans, executed and delivered for a valuable consideration, to Mrs. Sallie H. Murphy, a deed to the last above described tract of land which deed is recorded in Record Book 11, Page 286 in the Register's Office of Desha County, Arkansas, a copy of which is herewith filed marked "Exhibit C" and the original will be produced on or before the hearing if required.

Your orators would further represent unto your Honors, that on August 12th, 1898, the Commissioners of Lands for the State of Arkansas by regular conveyance conveyed to Mrs. Sallie H. Murphy, the fractional Northeast quarter of Section thirty-five on Island 76 in Township eleven South of the base line, Range one East Fifth Principal meridian, containing fifteen and eight one hundredths acres, a copy of which deed is herewith filed marked Exhibit "D"

and made a part hereof, the original of which will be produced on or before the hearing if required, and subject to inspection.

Your orators would further represent that after the aforesaid lands were bought and entered from the United States Goverment as afresaid by the parties aforesaid, they were duly listed and as-
5 sessed for State, County and other taxes to the State of Arkansas and County of Desha, and that they were returned delinquent for said taxes for some years, and were declared forfeited to the State of Arkansas for said taxes so found to be delinquent and unpaid.

That afterwards the Legislature of Arkansas passed an Act entitled "An Act to enforce payment of overdue taxes," which act was approved March 12th, 1881. That under the provisions of said Act, a suit was brought and instituted in the Circuit Court of Desha County, on the Chancery side thereof by the State of Arkansas against various lands and parties; the object of said suit was to determine whether the forfeiture of said lands to the State of Arkansas was valid, and to ascertain the amount of taxes due on said lands to the State of Arkansas, and County of Desha, which was sought to be declared to be a lien upon said lands, and when the amount of said lien should be ascertained, if not paid by time certain to be fixed by said Court, that the said lands be offered for sale, and sold for overdue taxes.

Your orator would further represent that the lands hereinbefore described were embraced in that proceeding against various parties and lands for the foreclosure of tax liens under the Acts of the State of Arkansas as aforesaid.

Your oratoes further represent unto Your Honors that such proceedings were had in said suit and cause, that on October 11th, 1883, on one of the days of the Fall Term of said Court in 1883, a decree was rendered and entered of record in which was ascertained and fixed the amount of taxes due the State of Arkansas and County of Desha upon each of said tracts of land included in Island 76 as aforesaid, and ordering that said taxes so found to be due be paid on or before a certain date to be fixed, and in default thereof said lands were condemned to be sold, and J. S. Ross a citizen of the State of Arkansas, was duly appointed Special Commissioner for the purpose of exposing to sale said lands and selling the same.

That default was made in the payment of said taxes so found to be due by the Chancery Court on the said lands aforesaid, and said Special Commissioner having given due and legal notice by advertisement of said intended sale, in pursuance of said decree, did, on the 12th day of December, 1883, at the front door of the Court House in Arkansas City, Sta-e of Arkansas, and County of Desha,
6 offer said tracts of land for sale separately for the amount of said taxes, penalties and costs found to be due on each respective tract; and at the said sale the said Sallie H. Murphy, being the last and best bidder for each one of the said respective tracts aforesaid, the same were stricken off and sold to her for the amount of the tax, penalty and costs due under the provisions of said decree; and that she received a certificate of purchase therefor upon paying the amount of her said bid. And that the said Special Commis-

sioner Ross reported the sale he had made to the said Mrs. Sallie H. Murphy to said Court, (she being a resident of the State of Arkansas), and that said report of the said Special Commissioner, was in all things approved by the Court, and ordered to be at length spread upon the records of said Court, which was done.

Your orators would further represent unto Your Honors that the time for redeeming said lands from said sale having expired, and no part of the said lands having been redeemed by any one, the said Chancery Court did at its January Term, 1886, by an order duly entered and of record, direct said Special Commissioner Ross to execute, acknowledge and deliver to Mrs. Sallie H. Murphy a deed conveying to her the said lands and that said Special Commissioner did, in obedience to said order, on the last day of April, 1886, execute, acknowledge and deliver a deed to the said Mrs. Sallie H. Murphy, conveying all of said lands in fee to her.

Your orators would further represent that the said Special Commissioner did afterwards, to-wit, on Tuesday August 10th, 1887, it being one of the days of the July Term, 1887, of the Chancery Court of Desha County, Arkansas, appears in said Court and present to said Court for examination and approval, the deed so executed and acknowledged by him conveying all of the said lands to the said Mrs. Sallie H. Murphy, and the said Court did thereupon examine said deed, and finding the same in due form of law and properly executed and acknowledged in all things approved and confirmed said deed and ordered that its order approving and confirming the same be endorsed on said deed to the end that ir might be admitted to record; and thereupon said Special Commissioner delivered to Mrs. Sallie H. Murphy said deed which is now duly recorded in Book Six of Deeds, Pages 577-8-9 in the Recorder's Office of Desha County, Arkansas. A duly certified copy of said deed and
7 order is hereto attached and marked "Exhibit E" and prayed to be taken as a part hereof.

Your orators further show unto your Honors that on the 22nd day of August, 1898, Mrs. Sallie H. Murphy, then the owner of said property as aforesaid sold and delivered to your orators Moore and McFerrin the property hereinbefore described as Island 76 in the Mississippi River, by a general warranty deed for the sum of Twenty-eight Hundred Dollars and they allege that they have paid the whole of the purchase money on said island under said deed. A copy of said deed is herewith filed, and marked Exhibit "F" and made a part hereof, and will be produced now, if required, the original deed being subject to the inspection of the defendants at any time.

Your orators further represent and show unto your Honors that upon the receipt of the deed last aforesaid of August 22nd, 1898, from Mrs. Sallie H. Murphy, and even before that time, under a contract of sale, that they took possession of said Island 76, and about September or October, 1898, they took actual possession of the same by their agents and in person and commenced cutting timber thereon, and did during the fall and winter of 1898, cut a considerable amount of timber and shipped the same, having a regular camp on said island; and that they have continually from the

month of October, 1898 up to the present time had actual possession of said property, continuously cutting timber thereon and rafting the same, and the said rafts of timber have been all the time connected to said island or scattered in the woods on the same, and they having paid or obligated themselves to pay, timber men for cutting the same and carting it.

They further state that the vendor Mrs. Sallie H. Murphy was in constructive possession of said island at the time she bought it in 1883 up to the time she sold it to your orators in August 1898, and that your orators have been in actual possession of the same and are now in possession of the same by their agents ever since the date of the purchase from Mrs. Sallie H. Murphy in August, 1898, and have never relinquished their possession of same since August, 1898, until the present time, and they claim now to be in possession of the entire property and real estate of Island 76 as hereinabove described.

Your orators further charge and represent that said lands known as No. 76, are in the Mississippi River, lying in front of
8 a portion of Bolivar County, in the State of Mississippi and lying in front also of a portion of Desha County, Arkansas, and that said lands are of the value of more than Two Thousand Dollars exclusive of interest and costs.

Your orators further charge and represent, upon information and belief, that the aforesaid tracts of land, constituting Island 76, from the year 1847, have been taxed and represented by the State of Arkansas, and that the taxes on the same, under the various proceedings in the State of Arkansas, have been collected and paid to the State of Arkansas from the year 1847 down to the present time and up to this date, in various ways, the entire taxes on said property have been charged on said lands for the State of Arkansas, and have been paid from said year 1847 up to this time to the State of Arkansas and is within its limits; that the plaintiffs claim title under the laws of the State of Arkansas, and that the defendants claim title under the laws of the State of Mississippi.

Your orators further charge and represent that from the date of grants of the United States as aforesaid in 1847 down to the present time, the grantees heretofore named as having purchased from the United States of America in 1847, and their assigns, have continually from that time, as citizens of the State of Arkansas, paid the taxes on said island and property hereinbefore described in the manner hereinbefore stated, and that other parties have paid the same under regular tax proceedings, and bought the same under and
— pursuance of the tax laws of the State of Arkansas.

Your orators further represent unto your Honors that by an Act of Congress of the United States of America, approved on June 15th, 1836, the territory of Arkansas was admitted into the Union as an independent State, fixing its eastern boundary as the middle of the main channel of the Mississippi River, which was the same as fixed by Congress for the territory before it was admitted to the Union as a State.

Your orators further state and charge upon information, advice and belief, that in February, 1846, W. Pelham, Surveyor General

of the State of Arkansas, made a plat of said State, in which the tracts of land herein described as constituting Island 76 was platted as a part of the State of Arkansas, and as part of Townships eleven and twelve South, Range one East, and Sections thirty-five,
9 thirty-six and two, and that on December 23rd, 1846, said plat by the Surveyor General of the State of Arkansas was approved by the United States. All of which will appear from a copy of said plat, which will be filed herewith on or before the hearing if required, the original of the same not being in the possession of your orators.

Your orators would further represent and show unto your Honors, that since the year 1836, the date of the admission of the territory of Arkansas into the Union, and since the year 1846, the date of the plat of the State of Arkansas by W. Pelham, Surveyor General, said tract hereinbefore described as constituting Island 76 in the Mississippi River, has belonged to and constituted a part of the State of Arkansas, and a part of Desha County in said State.

Your orators would further represent unto your Honors that since the year- 1846 and 1847 said island has been treated as belonging to the State of Arkansas, and part of Desha County in said State, and has been since 1847, the date of the sale by the United States Government to the parties hereinbefore mentioned, *being* assessed for taxation, and the taxes thereon paid by the various owners, as a part of the State of Arkansas up to the present time. And your orators herein allege upon information and belief that said island is a part of the State of Arkansas, and is within the Western Division of the Eastern District of Arkansas, and within the jurisdiction of this Court.

Your orators would further state that, in order to put the Court in full possession of the facts connected with this litigation so far as they now have information and knowledge, say that in 1817 the territory of Mississippi was admitted into the Union, and in said *tract* of admission by the Congress of the United States they stated, " * * * to the Mississippi River; thence up the same to the beginning" thus fixing the Eastern bank of the Mississippi River as the Western Boundary of the State of Mississippi.

Your orators further represent upon advice and belief, that the Congress of the United States has never by any act, changed the Western Boundary of the State of Mississippi since said Act of admission in 1817, and the Western Boundary of said State is still the Eastern Bank of the Mississippi River, perhaps at low water mark.

Your orators further represent unto your Honors that after the admission of the Territory of Mississippi into the Union as
10 a State, that the Legislature of said State, by an Act passed February 24th, 1836, and subsequent Acts, established and fixed the boundary lines of the County of Bolivar, in the State of Mississippi as follows, to-wit:

"*Bolivar:* Beginning at the point where the line between Township twenty-four and twenty-five intersects the line between ranges two and three West, and running thence with said Range line to the point where the same intersects the line between Townships twenty-one and twenty-two, thence East with the said Township lines to

Tallahatchie River; thence down the Tallahatchie River and Yazoo River to the point where the old Choctaw boundary line intersects the Yazoo River; thence with said boundary line to the point where the line between Townships nineteen and twenty leaves the same; thence west with said Township line to the Mississippi River; thence up the Mississippi River to the point where the line between Township- twenty-four and twenty-five intersects the same, and thence with the said Township lines to the beginning, shall form a new County, and shall be called the County of Bolivar."

Your orators further represent unto your Honors, upon information and belief, that at the date of admission of the State of Arkansas into the Union in 1836, and that at the date of the survey of said State in 1846 by W. Pelham, Surveyor General of the State of Arkansas, the main channel of the Mississippi River was east of the property herein described as Island 76; and that said Island and property has all the time belonged to the territory and within the limits of the State of Arkansas and under its jurisdiction, and does belong to said State now. But they further state upon information, that during these periods the channel of the Mississippi River has changed, by cut-offs and otherwise, from one side of the island to another, but in so doing it has never changed the jurisdiction of said island from the State of Arkansas.

Your orators further represent unto your Honors that notwithstanding the foregoing facts, that on or about August 20th, 1899, they were first informed that the County of Bolivar and State of Mississippi had assumed to levy a tax upon the land comprising said Island 76, and that the Assessor of said Bolivar County, Mississippi, without right or authority of law, had assumed to assess said Island 76 in Bolivar County and place the assessment on the tax books of Bolivar County Mississippi, and that said lands were reported forfeited to the said State of Mississippi, and that
11 either the Auditor of Mississippi, or some officer of the said State of Mississippi, by some kind of instrument of writing, the character of which is unknown to your orators did, on or about the 10th day of August, 1899, attempt to convey to defendants, R. J. McGuire, E. H. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, residents and citizens of said Bolivar County, Mississippi, in various parcels, the lands hereinbefore described as constituting Island 76 in the Mississippi River aforesaid.

And that by virtue of said instruments of writing, whatever it may be, of Date August 10th, 1899, which they upon information and belief, aver to be some kind of a tax deed, the said defendants aforesaid are now claiming an interest and title to the lands hereinbefore described as constituting Island 76.

Your orators would further show unto your Honors that they are informed and believe that the State of Mississippi and County of Bolivar, never made any claims to said Island 76 until sometime in 1882 or later, after there had been some change in the channels of the Mississip-i River.

That sometime in 1892 or 1893 the State of Mississippi attempted to and did, sell Island 76 claiming the title under forfeiture for

taxes, to one J. T. Currie and M. A. Hall, but that, afterwards in 1893 or 1894, under the application of said purchasers through their attorneys to the Auditor or Attorney General of the State, or other proper official, the authority of the State of Mississippi, and its jurisdiction over the island was abandoned, and the State of Mississippi therein abandoned its claim to said island and conceded that it belonged to the State of Arkansas, and thereupon refunded the purchase money to the purchasers thereof, to-wit; Currie and Hall and this matter was entered of Record in the Auditor's office, or Land Office of the State of Mississippi.

But since this matter has arisen, your orators having never heard of this Mississippi claim until the latter part of August, 1899, long after they had bought said property, they say that they are not able to present the true record from the Land office, or the Auditor's office of the State of Mississippi hereinabove stated, because they say that since they first learned that the said State of Mississippi claimed said Island 76, a yellow fever epidemic has raged in
12 Jackson, the capital of the State of Mississippi, and that the officials of said State are absent, and your orators cannot get or procure copies of said records, but they will do so as soon as possible, and present same to this Honorable Court.

Your orators would further represent unto your Honors that notwithstanding the facts as hereinbefore stated, that early in the summer and fall of 1898 they bought said property *bona fide* and took possession of said Island, established a camp and foundations for houses and tents thereon, and cut a considerable amount of timber, cottonwood logs therefrom, and left a man in charge of said property with a raft anchored to said island, during the temporary absence of the main camp on the Arkansas River, with the expectation to return, and did return about August 12th, 1899, yet your orators state that the said defendants R. J. McGuire, E. W. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, as they are informed and believe, placed the defendant C. J. Jones, Jr., on said Island and attempted to take possession of the same and oust your orators from the possession thereof, making various and sundry demands and threats unnecessary to mention here, but which will be shown in the proof.

Your orators further represent unto your Honors that during their occupancy and possession of said property, they cut various saw logs of cottonwood timber from said property, amounting to as they believe *to* about five hundred cottonwood logs on the river bank of said Island of the value of about Seven Hundred and Fifty Dollars, and three hundred and fifty cottonwood logs on raft in Mississippi River anchored to said Island 76, and of the value of about Five Hundred and Twenty-five Dollars and eight hundred cottonwood lo*n*gs on the bank of said Island and in the woods of said Island 76, to the value of about Eight Hundred Dollars, total value Two Thousand and Seventy-five Dollars ($2,075.00) all being within said Island.

Orators further state that said cottonwood logs are liable to deterioration in value and liable to be washed away and lost and irrepa-

rable damage done orators unless prompt action is taken and injunction granted promptly.

That the said defendants placed the defendant C. L. Jones, Jr., on said Island in the latter part of August, 1899, claiming to ho[illegible] possession, and by threats attempted to intimidate the agents
13 of your orators and force them to leave the island with all the above timber in possession.

Your orators would further state that they have paid for, or obligated themselves to pay for the cutting, rafting and hauling of said cottonwood logs on said Island, and that said defendants failing to intimidate or force the agents of your orators to leave said Island, did, on or about October 16th or 17th, 1899, fraudulently and wrongfully sue out some kind of process of replevin in the State of Mississippi, and attempt to replevin said logs from your orators' agents then in possession of same, and actually went through the formula of serving said writs of replevin, and they are informed that the officer attempted to execute said replevin from one of the Courts of Bolivar County, Mississippi, actually went through the formula of taking possession and turned the same over to the said defendants hereinbefore stated, who then placed the defendant, D. W. Wilson, in charge thereof, as far as it could be done, and that the defendants, through their agents, C. L. Jones, Jr., and D. W. Wilson now claim to be in possession of the same, it having been turned over to them by the Sheriff, or some other officer, of Bolivar County, Mississippi, said logs still *belong* on said Island.

Your orators further allege that said proceedings in Bolivar County Mississippi, is absolutely void for want of jurisdiction of the subject matter, said Island 76, and the property thereon — situated in the County of Desha and State of Arkansas.

Your orators further represent and show, upon information, that afterwards, to-wit: on or about the 23rd day of October, 1899, the said defendants, with the exception of C. L. Jones, Jr., and D. W. Wilson, brought an action of forcible entry and detainer before some magistrate of Bolivar County, Mississippi to obtain possession of said Island 76.

And your orators further represent unto your Honors and charge that said action of forcible entry and detainer is without authority of law, the said magistrate having no jurisdiction whatever over the said island, and which is merely a possessory action, and being local in its nature, your orators filed their petition and had the cause removed, on October 28th, 1899, to the Circuit Court of the United States for the Southern District of Mississippi, at Vicksburg. They charge that said action is totally without authority of law or
14 jurisdiction of said magistrates, but was intended by a combination and fraud to get some kind of a writ of possession of said Island 76 against your orators.

All these matters are stated so as to place the Court in possession of all the facts so far as your orators know.

Your orators further represent unto your Honors that since the foregoing part of this bill was dedicated and written, they learn that said defendants have instituted some other suit, or proceeding, in Bolivar County, Mississippi, either before a Justice of the Peace or

the Circuit Court, they do not know which, to recover possession of the timber and property on said Island 76, the character of which proceedings is unknown to your orators at this time, but this fact is stated to show the intention on the part of the defendants to further harass and annoy your orators with a multiplicity of suits in the Courts of Bolivar County Mississippi, which your orators claim has no jurisdiction in this matter. They further state that unless defendants be promptly enjoined, orators are liable to a multiplicity of suits and delays and irreparable damages.

Your orators further represent unto your Honors that in addition to the foregoing that the State of Mississippi claims to have attained title to said Island by what is known as the "Swamp Land Act" passed by the Congress of the United States, and approved about September 24th, 1852.

And that the State of Arkansas claims to have derived title to said Island under an Act of Congress of the United States known as the "Swamp Land Act" approved September 28th, 1850.

Notwithstanding the fact that before the passage of the Swamp Land Acts to-wit, in 1847, the United States Government had sold said Island and the property hereinbefore described to private individuals and citizens of the State of Arkansas.

So your orators would further show unto your Honors that they are claiming title to said Island under title derived from the United States Government under the sale of 1847, and also the State of Arkansas under the "Swamp Land Acts" of 1850, as aforesaid, and that the defendants are claiming title to said Island through a grant of the State of Mississippi under the Swamp Land Acts of 1852, as they are now advised and believe, thus placing the jurisdiction of this controversy in the Circuit Court of the United States.

Your orators would further represent and show unto Your Honors, that they are without adequate remedy at law in this matter, and are advised that a Court of Equity can only give them adequate relief.

They are further advised that the title claimed by the defendants under and through the tax laws of the State of Mississippi, is illegal and void, but however is a cloud upon their title to Island 76 and the property hereinbefore described, and that they are entitled in a Court of Equity to have said cloud removed and the title thereto quieted.

They further state that they are advised that they are entitled to have defendants, their agents and attorneys enjoined from further proceedings in the State Courts of Mississippi, or from bringing any further suits to harass your orators in regard to the property hereinbefore described, in order that the whole may be settled in a proper tribunal, the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

Your orators further represent unto your Honors that of the said personal property hereinbefore described, to-wit: the raft in the Mississippi River of about two hundred and fifty cottonwood logs, that it is liable to break loose or sink and be lost or destroyed, and that the cottonwood logs on the banks and in the woods are liable to deteriorate by the action of worms, or an overflow may float the

[illegible] property is liable to depreciate and be lost unless attended to and disposed of at once, and that in this connection they deem it necessary and important that a Receiver be appointed by this Honorable Court to take charge of said property, rafts and logs now cut on said Island 76 and sell and dispose of the same for the best prices he can, for the best interests of the parties concerned. And they allege that great damage is liable to occur unless a receiver is appointed soon for the said land and logs with full power to take charge of and dispose of the same.

Premises considered your orators pray for process of subpœna against all of the defendants herein named, to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and D. W. Wilson and that as against the non-residents such orders may be made by this Court as under the practice is necessary to give said non-residents proper notice.

That a warning order may be issued against the said non-residents requiring each and every one of them to appear, plead, answer or demur to this bill, and that all such orders may be made herein as are necessary to have process served on said non-residents at
16 their places of residence, as may be necessary and meet under the rules of practice of this Court. And that said defendants, each and every one of them, be required under proper process and orders of this Court as aforesaid to appear in this Court, and specifically set up and answer what title or claim they have to the real estate and property described in the bill herein, or any part thereof, and that they be required to exhibit their evidences or muniments of title to said property, if they have any, an oath to said answer being hereby waived.

II.

Your orators further pray that a writ of injunction be granted by this Honorable Court herein restraining the said defendants, to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr., and D. W. Wilson, their agents representatives and attorneys, from further interfering with or attempting to interfere with the possession of your orators in and to the property known as Island 76, hereinbefore described, or the timber or logs thereon cut, or the raft attached thereto.

That the defendants aforesaid to-wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr. and D. W. Wilson be restrained and inhibited from bringing or prosecuting any further suits in the Court of Bolivar County, Mississippi or any Court of the State of Mississippi, or prosecuting any suits they have already brought against your orators, either for the possession of said Island 76 or for the possession of any timber or logs cut thereon by your orators, or for any raft or logs now anchored in the Mississippi River to said Island, which logs have been cut therefrom, and that the said defendants be required to bring all these matters and ques-

unto this Court a full and final adjudication and determination in order that the rights of all parties may be settled and determined.

III.

Your orators further pray that upon final hearing of this cause that they may be decreed to have an absolute title to said Island 76 and property hereinbefore described and that whatever claim or title said defendants to wit: R. J. McGuire, E. H. Woods, E. S. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger, W. H. Fitzgerald, C. L. Jones, Jr. and D. W. Wilson may have or set up herein to said property may be removed and cancelled as a cloud
17 upon your orators' title herein, and the whole matter determined and the title of your orators be confirmed and quieted.

IV.

Your orators further pray for all such other relief, and further relief as in equity they may be entitled to, both generally and special and they pray for general relief.

MOORE AND McFERRIN,
By MYERS AND BANKS,
D. E. MYERS,
ROSE, HEMINGWAY AND ROSE.

Endorsed: Filed November 2nd, 1899. W. P. Feild, Clerk.

18 Exhibit "A" to the Bill of Complaint was not furnished but in lieu a transcript of the Record of the various entries and sales by the United States Government to the various parties and to the various tracts of land on Island 76, the land in controversy, each conveyance being properly certified by Binger Herman, Commissioner General Land Office, United States, and filed herewith as Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 to bill as evidence of title.

19 EXHIBIT "1."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of Josephine Dempsey founded on Helena, Arkansas, Cash Entry No. 5029 Preemption is a true and literal exemplification from the record in this Office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Pre-emption Certificate No. 5029.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas Josephine Dempsey, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said Josephine Dempsey, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter of fractional Section Thirty-five, and the West half of the South West quarter of fractional Section Thirty-six, in Township Eleven South, of Range One East, in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and fifty-nine acres, and four hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tracts have been purchased by the said Josephine Dempsey.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Josephine Dempsey and to her heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Josephine Dempsey and to her heirs and assigns forever.

In testimony whereof, I, James K. Polk, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of November, in the year of our Lord one thousand eight hundred and forty-eight, and of the Independence of the United States the seventy-third.

By the President:

JAMES K. POLK,
By J. K. STEPHENS, *Ass't Sec'y.*
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 306.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

21

EXHIBIT "2."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George S. Crane founded on Helena, Arkansas, Cash Entry No. 5030 Pre-emption is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Pre-emption Certificate No. 5030.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George S. Crane, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said George S. Crane, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North fractional half (on Island) of fractional Section Thirty-six, in Township Eleven South, of Range One East, in the District of Lands subject to sale at Helena, Arkansas, containing eighty two acres, and eighty-eight hundredths of an acre, according to the official plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said George S. Crane.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and
22 by these presents do give and grant, unto the said George S. Crane and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said George S. Crane and to his heirs and assigns forever.

In testimony whereof I, James K. Polk, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the First day of November, in the year of our Lord one thousand eight hundred

and forty-eight, and of the Independence of the United
[L. S.] States the seventy-third.
By the President:

JAMES K. POLK,
By J. K. STEPHENS, *Ass't Sec'y.*
S. H. LAUGHLIN,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 307.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

23 EXHIBIT "3."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George S. Crane founded on Helena, Arkansas, Choctaw Certificate No. 671C is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

24 *Choctaw Certificate No.* 671C.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George S. Crane assignee of Ah-no-si has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, Arkansas, whereby it appears that Choctaw Certificate No. 671C, in the name of Ah-no-si, for eighty acres of land (issued by the Secretary of War in pursuance of the provisions of the Act of Congress of the 23d of August, 1842, entitled "An act to provide for the satisfaction of claims arising under the fourteenth and nineteenth Articles of the Treaty of Dancing Rabbit Creek, concluded in September, one thousand eight hundred and thirty:" of the act of Congress of the 3d of March, 1845, entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with the various Indian tribes, for the fiscal year commencing on the 1st day of July, 1845, and ending on the 30th day of June, 1846," and of the Joint Resolution of Congress of the 3d of August,

1846, entitled "Joint Resolution to authorize the Secretary of War to adjudicate the claims of the Su-quak-natch-ah and other clans of Choctaw Indians, whose cases were left undetermined by the Commissioners for want of the township maps,") has been surrendered by the said George S. Crane in full satisfaction for the East half of the South West quarter of Section thirty six in Township eleven. South of Range one East (on Island) in the District of Lands subject to sale at Helena, Arkansas, containing eighty acres according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor-General, which said tract has been located by the said George S. Crane.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said George S. Crane and to his heirs, the said tract above described: To have and to hold the same, together with all the rights, privileges, immunities and appurtenances, of whatsoever nature thereunto belonging, unto the said George S. Crane and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed. Given under my hand, at the city of Washington, the first day [L. S.] of August, in the year of our Lord one thousand eight hundred and forty nine, and of the Independence of the United States the seventy fourth.

By the President:

Z. TAYLOR,
By THOS. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Vol. 268, page 23, Arkansas.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

EXHIBIT "4."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of George Jefferies founded on Helena, Arkansas, Cash Entry No. 5147 is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and

caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of General Land Office.

Certificate No. 5147.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas George Jefferies, of Phillips County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said George Jeffries, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter (on Island) of fractional Section thirty-six, in Township Eleven South, of Range One East, in the District of Lands, containing twenty-six acres, and ninety six hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said George Jefferies.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said George
27 Jefferies and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said George Jefferies and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, page 440.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

28 EXHIBIT "5."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John R. Wilkinson founded on Helena, Arkansas, Cash Entry No. 5143 is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of General Land Office.

Certificate No. 5143.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John R. Wilkinson, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that Full Payment has been made by the said John R. Wilkinson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North East fractional quarter (on Island) of fractional Section one, in Township twelve South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing seven acres, and eighty-nine hundredths of an acre, according to the Official Plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John R. Wilkinson.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted,
29 and by these presents do give and grant, unto the said John R. Wilkinson and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said John R. Wilkinson and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of

December, in the year of our Lord one thousand eight hun-
[L. S.] dred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, page 436.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

30 EXHIBIT "6."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John R. Wilkinson founded on Helena, Arkansas, Cash Entry No. 5144 is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

31 *Certificate No.* 5144.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John R. Wilkinson, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John R. Wilkinson, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provisions for the sale of the Public Lands," for the North West fractional quarter (on Island) of Section one, in Township twelve, South, of Range one East in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and thirty-seven acres, and thirty-eight hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office by the Surveyor Genera', which said Tract has been purchased by the said John R. Wilkinson.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress

in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John R. Wilkinson and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John R. Wilkinson and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

[SEAL.] Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thou-
32 sand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 437.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

33 EXHIBIT "7."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5145 is a true and literal exemplification from the record in this Office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Certificate No. 5145.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled

"An Act making further provision for the sale of the Public Lands," for the South West fractional quarter (on Island) of fractional Section one, in Township twelve South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing ten acres, and fifty-six hundredths of an acre, according to the official plat of the Survey of the said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of
34 Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof, I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

By the President:

[L. S.] Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SRAGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 438.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

35 EXHIBIT "8."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5146 is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

Certificate No. 5146.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the North fractional half of the North East fractional quarter (on Island) of fractional Section two, in Township twelve, South, of Range one East, in the District of Lands subject to sale at Helena, Arkansas, containing sixty-five acres and fourteen hundredths of an acre, according to the official plat of the Survey of said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin
36 and to his heirs, the said Tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent. and the Seal of the General Land Office to be hereunto affixed.

By the President:

[L. S.]

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 439.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

37 EXHIBIT "9."

124,035. J. S. D.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb. 18th,* 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copy of Patent in favor of John J. Lovin founded on Helena, Arkansas, Cash Entry No. 5078 Pre-

emption is a true and literal exemplification from the record of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington on the day and year above written.

(Signed) BINGER HERMANN,
[SEAL.] *Commissioner of General Land Office.*

38 *Pre-emption Certificate No. 5078.*

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, John J. Lovin, of Desha County, Arkansas, has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Helena, whereby it appears that full payment has been made by the said John J. Lovin, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," for the South East fractional quarter and South half of the North East quarter of fractional section two, in Township twelve, South, of Range one, East, (on Island) in the District of Lands subject to sale at Helena, Arkansas, containing one hundred and sixty acres, and nine hundredths of an acre, according to the official plat of the Survey of said lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John J. Lovin.

Now know ye That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John J. Lovin and to his heirs, the said Tract above described; to have and to hold the same, together with all rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John J. Lovin and to his heirs and assigns forever.

In testimony whereof I, Zachary Taylor, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, on the
[L. S.] first day of December, in the year of our Lord one thousand eight hundred and forty-nine, and of the Independence of the United States the seventy-fourth.

39 By the President:

Z. TAYLOR,
By THO. EWING, JR., *Sec'y.*
N. SARGENT,
Recorder of the General Land Office.

Recorded Arkansas, Vol. 173, Page 379.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

40 EXHIBIT "10."

M. L. 124,035. E. M.

DEPARTMENT OF THE INTERIOR,
K. GENERAL LAND OFFICE,
R. C. L. WASHINGTON, D. C., *February 18th*, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed paper, being a copy of Arkansas Swamp Land Patent No. 11, Helena series, issued April 20, 1859, is, in so far as it relates to the N. E. frl. ¼ Sec. 35 T. 11 S, R 1 E., and the S. W. frl. ¼ Sec. 2, T. 12 S, R. 1 E., a true and literal exemplification of the record of the original patent in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

(Signed) BINGER HERMANN,
Commissioner of the General Land Office.

No. 11.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits," it is provided that all the "Swamp and Overflowed Lands," made unfit thereby for cultivation, within the State of Arkansas which remained unsold at the passage of said act, shall be granted to said State:

And whereas, In pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands," inuring to the said State under the act aforesaid, being situated in the District of Lands subject to sale at Helena, Arkansas, to-wit:

* * * * * * *

Township 11 South of Range 1 East.

41 The southwest fractional quarter on Island of Section two, containing thirty-five acres and ninety-two hundredths of an acre.

* * * * * * *

* * * according to the official plat of survey of the said lands to the General Land Office by the Surveyor General and for which the Governor of the said State of Arkansas, did on the fifteenth day of June, one thousand eight hundred and fifty-eight request a patent to be issued to the said State as required in the aforesaid act.

Now therefore know ye that the United States of America, in consideration of the premises and in conformity with the act of Con-

gress aforesaid, have given and granted and by these presents do give and grant unto the said State of Arkansas, in fee simple, subject to the disposal of the Legislature thereof, the tracts of land above described. To have and to hold the same, together with all the rights, privileged, immunities and appurtenances thereto belonging, unto the said State of Arkansas, in fee simple and to its assigns forever.

In testimony whereof I, James Buchannan, President of the United States of America, have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the twentieth day of April in the year of Our Lord one thousand eight hundred and fifty-nine and of the Independence of the United States the eighty-third.

By the President:

JAMES BUCHANNAN,
By T. J. ALBRIGHT, *Secretary.*
J. N. GRANGER,
Recorder of the General Land Office.

Endorsed: Filed Dec. 7, 1905. W. P. Feild, Clerk.

42 EXHIBIT "B" TO BILL.

THE STATE OF ARKANSAS:

To all to whom these presents shall come, Greeting:

Know ye, that whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved 28th of September, 1850. And whereas under the provisions of the Acts of the General Assembly of the State of Arkansas, regulating the price and sale of lands so granted, the Treasurer of the State of Arkansas, did grant his receipt dated the 29th day of October and numbered 165 to, and in favor of Joe Evans for the following described lands, to-wit: the Southwest fractional quarter on Island of Section two (2) in Township Twelve South of the base line in Range One (1) East of the Fifth Principal Meridian. containing thirty-five and 92/100 acres and said lands having been patented by the United States to the State of Arkansas, as a portion of the Swamp and Overflowed Lands granted to said State by the Act of Congress aforesaid, and the purchase money for said lands amounting to Forty-four (44) Dollars and Ninety (90) Cents having been fully paid; therefore the said Joe Evans is entitled to a deed from the State of Arkansas for said land.

Now therefore I C. B. Myers Commissioner of State Lands for the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to the said Joe Evans and to his heirs and assigns, the tracts of land hereinbefore designated.

To have and to hold the said tracts or parcels of land hereinbefore described, with the appurtenances thereunto belonging to the said Joe Evans and to his heirs and assigns forever.

In testimony whereof I C. B. Myers Commissioner of State Lands for the State of Arkansas have hereunto set my hand and caused the seal of my said office to be affixed, at the City of Little Rock,
43 on this 29th day of October 1890, and of the Independence of the United States of America the one hundred and fifteenth year.

(Signed) C. B. MYERS,
[SEAL.] *Commisioner of State Lands for the State of Arkansas.*

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and Ex-Officio Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and that the same is now duly recorded with the acknowledgement and certificate thereto in State Deeds Record Book "AA" on page one hundred and thirty-four.

In testimeny whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for Record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

44 EXHIBIT "C" TO BILL.

For and in consideration of the sum of One Hundred Dollars cash in hand the receipt of which is hereby acknowledged, We Joseph Evans and Mary E. Evans, his wife, of Yell County in the State of Arkansas have granted, bargained and sold and by these presents do grant bargain and sell unto Mrs. Sallie H. Murphy, wife of James Murphy, the following tract of land to-wit: Southwest fractional quarter on Island of Section two (2), in Township No. twelve (12), South of Range No. one (1) East in Desha County, Arkansas with all the accretions thereto with all and singular the appurtenances thereunto belonging. To have and to hold to said Sallie H. Murphy, her heirs and assigns in fee simple forever.

And I Mrs. Mary E. Evans, wife of said Joseph Evans for the consideration aforesaid do hereby freely and fully relinquish and release unto said Mrs. Sallie H. Murphy, her heirs and assigns all my right, claim and possibility of dower into and out of said aforegranted premises.

It is distinctly undersood and agreed that the title hereby conveyed is only the title acquired by said Joseph Evans by deed of Commissioner of State Lands for the State of Arkansas, dated 29th October, 1890.

Witness our hands and seals this 10th day of October, 1892.
(Signed) JOSEPH EVANS. [SEAL.]
MARY E. EVANS. [SEAL.]

STATE OF ARKANSAS, *County of Yell:*

Be it known that on this 10th day of October, 1892, at the County and State aforesaid personally appeared before the undersigned, an acting duly commissioned and qualified Notary Public in and for said County, the above mentioned Joseph Evans, to me personally well known and stated that he had executed the above and foregoing deed for the uses, purposes and consideration therein mentioned and set forth.

And on the same day also personally appeared before me the above mentioned Mrs. Mary E. Evans, wife of said Joseph Evans to me personally well known as one of the grantors in the above and foregoing deed of conveyance and in the absence of her said husband acknowledged that she had signed and sealed the relinquishment of dower therein expressed for the purposes therein contained and set forth without compulsion or undue influence of her husband.

Given under my hand and Notarial seal this 10th day of October, 1892.

[SEAL.] (Signed) GEORGE A. HARMON,
Notary Public.

My Commission expires January 23rd, 1903.

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and *Ex-Officio* Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and the same is now duly recorded with the acknowledgment and certificate thereto in Real Estate Record Book 11 on page 286.

In testimony whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

EXHIBIT "D" TO BILL.

The State of Arkansas to all to whom these presents shall come, Greeting:

Know ye, that whereas, by an Act of Congress of the United States of America, entitled "An Act to enable the State of Arkansas and other States to reclaim the swamp and overflowed lands within their limits," approved 28th of September, 1850. And whereas under the provisions of the Acts of the General Assembly of the State

of Arkansas, regulating the price and sale of lands so granted, the Treasurer of the State of Arkansas, did grant his receipt dated the 12th day of August, 1898 and numbered 21 to, and in favor of Sallie H. Murphy for the following described lands, to-wit:

Fractional Northeast quarter of Section thirty five (35) on Island in Township Eleven South of the base line in Range One (1) East of the Fifth Principal Meridian, containing Fifteen and eight hundredths acres and said lands having been patented by the United States to the State of Arkansas, as a portion of the Swamp and Overflowed Lands granted to said State by the Act of Congress aforesaid, and the purchase money for said lands amounting to Eighteen Dollars (18) and eighty-five (85) Cents having been fully paid; therefore the said Sallie H. Murphy is entitled to a deed from the State of Arkansas for said land.

Now therefore I J. F. Ritchie Commissioner of State Lands for the State of Arkansas, for and in behalf of said State, and in consideration of the premises, have granted, bargained, sold, confirmed and conveyed, and by these presents do grant, bargain, sell, confirm and convey to the said Sallie H. Murphy and to her heirs and assigns, the tracts of land hereinbefore designated.

To have and to hold the said tracts or parcels of land hereinbefore described, with the appurtenances thereunto belonging to the said Sallie H. Murphy and to her heirs and assigns forever.

In testimony whereof I J. F. Ritchie Commissioner of State Lands for the State of Arkansas have hereunto set my hand and caused the seal of my said office to be affixed, at the City of Little Rock, on this 12th day of August 1898, and of the Independ-
47 ence of the United States of America the one hundred and twenty-third year.

[SEAL.] (Signed) J. F. RITCHIE,
Commissioner of State Lands for the State of Arkansas.

STATE OF ARKANSAS, *County of Desha:*

I, Howard Robb, Clerk of the Circuit Court and *Ex-Officio* Recorder, within and for said County and State do certify that the annexed instrument of writing was filed for record in my office on the 15th day of August, 1898, at four o'clock P. M. and that the same is now duly recorded with the acknowledgement and certificate thereto in State Deeds Record Book "A A" on page one hundred and thirty-four.

In testimony whereof I have hereunto set my hand and official seal this 15th day of August, 1898.

[SEAL.] (Signed) HOWARD ROBB, *Clerk.*

Endorsed: Filed for Record August 15th, 1898. Howard Robb, Clerk. Filed December 15th, 1905. W. P. Feild, Clerk.

48 EXHIBIT "E" TO BILL.

Know all men by these presents that whereas a decree was rendered in the Circuit Court of Desha County, Arkansas in Chancery sitting on the 11th day of October, A. D. 1883, in a certain cause therein pending wherein the State of Arkansas on relation of Desha County was plaintiff and certain lands on which taxes are alleged to be due and the State Auditor are defendants, condemning to be sold for non-payment of taxes the following tracts of land lying in said Desha County, viz:—

Parts of section.	Section.	Township.	Range.	Acres.	100ths.	Taxes.	Penalty and costs.
Fractional N. E. ¼	35	11 S.	1 E.	15	08	....	$5.18
Fractional S. E. ¼	35	11 S.	1 E.	79	14	....	8.00
Fractional N. W. ¼	36	11 S.	1 E.	82	52	....	17.00
Fractional S. E. ¼	36	11 S.	1 E.	26	96	...	5.40
East ½ S. W. ¼	36	11 S.	1 E.	80	....	....	15.00
West ½ S. W. ¼	36	11 S.	1 E.	80	....	....	8.00
Fractional section	1	12 S.	1 E.	147	38	....	11.52
Fractional section	2	12 S.	1 E.	261	10	....	18.44
Total	....	....	...	.	...	....	$88.54

And whereas said lands were on the 12th day of December, A. D. 1883, sold to Mrs. Sallie H. Murphy for the respective sum of money hereinbefore set opposite each tract aggregating the sum of Eighty-eight Dollars and fifty-four cents ($88.54), which said sum of money was thereupon paid by said Mrs. Sallie H. Murphy to me as Commissioner of said Court as required by law, each of said tracts having been separately offered for sale and each separately sold for the taxes penalty and costs assessed against it. And the sum so paid being the aggregate amount bid for all of said lands the said Mrs. Sallie H. Murphy having been the best bidder for each of said tracts, and no one offering to bid the amount of taxes penalty and costs assessed against said several tracts for a less quantity than the whole of each tract the same were separately stricken off to her,

49 which sale was duly reported by me to said Court and by said Court was approved and confirmed and my said report ordered to be recorded. And whereas the time allowed by law for redemption has expired and I, J. S. Ross, as Commissioner appointed by said Court am directed by said Court by an order made and entered of record at its January Term A. D. 1886 to execute a deed of conveyance conveying said land to said Mrs. Sallie H. Murphy.

Now therefore in consideration of said sum of money and of the premises aforesaid, I, as such Commissioner, do hereby grant, sell

and convey unto the said Mrs. Sallie H. Murphy, her heirs and assigns, the several tracts or parcels of land all and singular hereinbefore described.

Witness my hand as such Commissioner on this 1st day of April, 1886.

(Signed) J. S. ROSS,
Commissioner of Circuit Court, in Chancery, Desha County, Arkansas.

STA-E OF ARKANSAS, *Desha County, ss:*

Be it remembered that on this 1st day of April, A. D. 1886 at the County and State aforesaid personally appeared before me the undersigned an acting, duly commissioned and qualified Notary Public in and for said County, J. S. Ross, to me personally well known to be the grantor in the above and foregoing deed of conveyance and acknowledged that he as Commissioner of the Desha Circuit Court in Chancery sitting had executed and delivered the above and foregoing deed of conveyance for the uses, purpose and consideration therein mentioned and expressed and desired the same certified, which is accordingly done.

Given under my hand and notarial seal at the County and State aforesaid this 1st day of April, 1886.

(Signed) HENRY THANE,
[SEAL.] *Notary Public, Desha County, Arkansas.*

Endorsed: This deed is approved in open Court this August 9th, 1886. Jno. A. Williams, Judge.

STATE OF ARKANSAS, *County of Desha:*

Be it remembered that at a Term of the Circuit Court be-
50 gun and holden in and for the County of Desha at the Court House thereof in Arkansas City on Monday the 26th day of July 1886 it being the time and place fixed by law for the holding of the July Term, 1886 of said Court, present and presiding the Honorable John A. Williams, Judge of the Eleventh Judicial Circuit and J. P. Jones, Clerk of said Court and M. W. Quilling, Sheriff of Desha County being also present, Court was proclaimed in due form of law by said Sheriff and the following among other proceedings were had on the Chancery side thereof, to-wit:

And Tuesday, August 10th, 1897, being a day of said Term, Court met pursuant to adjournment. Presiding and present as of Monday July 26th, 1887, when Court was proclaimed in due form of law, and the following, among other, proceedings were had on the Chancery side thereof, to-wit:

373.

STATE OF ARKANSAS on Relation of DESHA COUNTY
vs.
CERTAIN LANDS ON WHICH TAXES ARE ALLEGED TO BE DUE.

On this day was presented to the Court for its examination and approval the deed of J. S. Ross, the Commissioner of this Court, who was directed to convey to Mrs. Sallie H. Murphy the following lands to-wit: All of fractional Section thirty-five, Township eleven South, Range one East; all of fractional Section thirty-six, Township eleven South, Range one East; all of fractional Section one, Township twelve South, Range one East; all of fractional Section two, Township twelve South, Range one East.

And on examination of said deed by the Court, it appearing to the satisfaction of the Court that the said deed is in due form of law and is properly executed and acknowledged and that it should be approved by the Court as a good and sufficient deed.

It is therefore ordered, adjudged and decreed by the Court that the said deed of the said J. S. Ross, as such Commissioner conveying to the said Mrs. Sallie H. Murphy the said lands above described be and the same is in all things approved and confirmed and that the order of approval be endorsed on said deed and recorded with it.

STATE OF ARKANSAS, *County of Desha:*

51 I, Henry Thane, Clerk of the Circuit Court and *Ex-Officio* Recorder within and for the said county of Desha and State aforesaid do hereby certify that the annexed instrument of writing was filed in my office for record on the 28th day of February, A. D. 1887, and that the same is now duly recorded in Record book six pages 577, 588, 589.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 1st day of March 1887.

[SEAL] H. THANE, *Clerk,*
By ED. C. WILLIAMS, *D. C.*

STATE OF ARKANSAS, *County of Desha:*

I, Henry Thane, Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing pages numbered one and two inclusive, contain a full, true, complete and compared copy of the matters therein set forth as the same appears of record in Chancery Record Book "C" on page 51 in my office.

In testimony whereof, I have hereunto set my hand as such Clerk and affixed the seal of my office at Arkansas City, Arkansas, this 28th day of February, 1887.

[SEAL.] (Signed) H. THANE, *Clerk,*
By ED. C. WILLIAMS, *D. C.*

Endorsed: Filed for record February 28th, 1887. H. Thane, Clerk, by Ed. C. Williams, D. C. Filed December 15th, 1905. W. P. Feild, Clerk.

52 EXHIBIT "F" TO BILL.

Warranty Deed.

Unmarried Person.

Know all men by these presents: That I Sallie H. Murphy for an-
in consideration of the sum of Two Thousand Eight Hundred Dollars paid and to be paid by Moore and McFerrin of Memphis Tennessee as follows, to-wit: One Thousand Four Hundred Dollars cash in hand, (the receipt of which is hereby acknowledged) and One Thousand Four Hundred Dollars on or before six months after date, evidenced by note of even date herewith for the said one Thousand Four Hundred Dollars bearing interest from date until paid at the rate of seven per cent. per annum, do hereby grant bargain and sell unto the said Moore and McFerrin and their heirs and assigns forever the following lands lying in the County of Desha and State of Arkansas, to-wit: Fractional Section thirty-five, 94 12/100 acres; fractional Section thirty-six, 269 84/100 acres, in Township Eleven (11) South, Range one (1) East of the Fifth Principal Meridian. Fractional Section one (1), 155 83/100 acres and fractional Section two (2), 261 15/100 acres in Township twelve (12) South, Range one (1) East of the Fifth Principal Meridian. All on Island numbered Seventy-six and all legal accretions thereunto accruing.

To have and to hold the same unto the said Moore and McFerrin and unto their heirs and assigns forever, with all appurtenances thereunto belonging. And I hereby covenant with the said Moore and McFerrin that I will forever warrant and defend the title to said lands against all claims whatever, and that said lands are free from all liens and incumbrances. It being hereby expressly understood that a lien is hereby retained upon said lots or parcels of land to secure the payment of the residue of the purchase money hereinbefore mentioned.

Witness my hand and seal on this 22nd day of August, 1898.

(Signed) SALLIE H. MURPHY. [SEAL.]

Acknowledgement.

STATE OF ARKANSAS, *County of Pulaski:*

Be it remembered that on this day came before me the undersigned a notary public within and for the County aforesaid,
53 duly commissioned and acting Sallie H. Murphy, to me well known as the grantor in the foregoing deed and stated that she had executed the same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public on this 22nd day of August, 1898.

[SEAL.] (Signed) H. G. MARTIN,
Notary Public.

Certificate of Record.

STATE OF ARKANSAS, *County of Desha:*

I Howard Robb, Circuit Clerk and *Ex-Officio* Recorder of the County aforesaid do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office on the 27th day of August, A. D. 1898, at nine o'clock A. M. and the same is now duly recorded with the acknowledgements and certificates thereon in Record Book 11, pages 293 and 294.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 21st day of September, 1898.

[SEAL.] HOWARD ROBB,
Circuit Clerk and Ex-Officio Recorder.

Endorsed: Filed and recorded on this 27th day of August, 1898 at nine o'clock A. M. Howard Robb, Clerk and Recorder. Filed December 15th, 1905. W. P. Feild, Clerk.

54 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it Remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 23rd day of October Anno Domini, One Thousand, Eight Hundred and ninety-nine at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 2nd, 1899.

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and D. W. WILSON.

Now on this day come the plaintiffs by their solicitors, Myers and Banks and D. E. Myers, and Rose, Hemingway and Rose, Esqs., and file their bill herein and pray the Court to appoint a Receiver herein and that an injunction may issue against the said defendants to enjoin them from interfering with or moving any logs lying on Island No. 76 in the Mississippi River in this District, and the matter being now heard by the Court—

It is ordered that said defendants be temporarily enjoined from removing any logs claimed by them on Island No. 76 in the Mississippi River, as aforesaid until further orders herein, and that the defendants appear here on the third Monday in December, 1899 and

show cause, if any they can, why such restraining order shall not be continued until the final hearing of this cause, and that a copy of this order be served on each of said defendants.

And it is further ordered that Jacob S. Ross, be, and he is
55 hereby appointed Receiver herein, as prayed, and that he execute a bond with good and sufficient sureties to said defendants in the penal sum of Twenty-five Hundred Dollars ($2500.00) conditioned that he shall well and sufficiently discharge his duties as receiver herein according to law and the orders of the Court, the same to be approved by the Clerk of this Court and be filed in this Court; and that he take and subscribe an oath that he will well and faithfully discharge his duties as Receiver in this cause according to law and the orders of this Court; and that thereupon said Receiver proceed to take into possession the logs named in the original bill filed herein, viz:—About five hundred and sixty cotton wood logs on the river bank of Island 76 in the Mississippi River, within this District and three hundred and fifty cotton wood logs on a raft anchored to the bank of said Island and about eight hundred cotton wood logs on said bank and in the woods of said Island and that he make an inventory of said logs and file it in this Court, and that he proceed to sell said logs to the best advantage, either at public or private sale as shall seem to him best, for the interest and advantage of the parties at the earliest day; that he pay the proceeds of such sale into the Registry of this Court, and report into Court all his proceedings under this order.

(Signed) JNO. A. WILLIAMS, *Judge.*

56 & 57 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 23rd day of October, Anno Domini, One Thousand, Eight Hundred and ninety-nine, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge, presiding and holding said Court, the following proceedings were had, to-wit: on November 4th, 1899.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It is ordered that the plaintiff execute a bond for injunction in this cause to said defendants in the penal sum of Twenty-five Hundred Dollars ($2500.00) conditioned according to law.

And now comes said plaintiffs and present their injunction bond conditioned according to law in said sum, and the same is by the Court approved and ordered to be filed.

Which injunction bond is as follows:

* * * * * * *

58 & 59 And on November 9th, 1899, the following proceedings were had to-wit:

1304.

MOORE and McFERRIN
vs.
R. J. McGUIRE ET AL.

Comes Jacob S. Ross, heretofore appointed receiver herein and files herein his oath of office and also his bond as such Receiver in the sum of Twenty-five Hundred Dollars with Chas. F. Kroger and William D. Preston, as sureties which bond is by the Court approved as sufficient.

Which oath of office and bond of Receiver is as follows, to-wit:

* * * * * * *

60 And on November 13th, 1899, the following proceedings were had to-wit:

1304.

MOORE and McFERRIN
vs.
R. J. McGUIRE ET AL.

Comes this day the Receiver herein and files herein his report, showing that some of the logs in his possession as such Receiver are encumbered with laborer's liens and asking that he may be allowed to discharge said liens, and that the receipts of the holders thereof may be allowed him as vouchers for money paid in his settlement with the Court—

And it is now ordered that said Receiver discharge said liens and that the receipts of the holders thereof be allowed him as vouchers in his settlement with the Court.

(Signed) JNO. A. WILLIAMS, *Judge.*

Which Report of the Receiver is as follows:

* * * * * * *

61–63 And on December 4th, 1899, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the defendants by J. M. Moore and W. B. Smith, Esqs., their solicitors and by leave of Court enter herein their appearance.

And on December 16th, 1899, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes J. S. Ross, Esq., Receiver herein and files his report of sale of logs.

Which Report of sale of logs is as follows:

* * * * * * *

64 And on December 26th, 1899, the following proceedings were had to-wit:—

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors and by leave of the Court first had and obtained, file herein their amendment to bill.

Which Amendment to Bill is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business Under the Firm Name of Moore and McFerrin,

65 *vs.*

R. J. MCGUIRE, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES ET AL.

Amendment to Original Bill.

To the Honorable the Judges of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas:

Your orators, William Moore and J. S. McFerrin, partners as Moore and McFerrin, by leave of the Court in this behalf first had and

obtained, bring this their amendment of their bill of complaint against the said respondents, R. J. McGuire, E. S. Woods *et al.*

And your orators complain and make amendment of their said bill of complaint herein as follows:—

1st. After the word "Arkansas" on the twelfth line of the sixteenth page of said original bill, insert the following, to-wit:

"Your orators further represent and state to your Honors that after they purchased the property in said bill described, to-wit: Island 76 in Mississippi River, which was about August, 1898, in addition to having cut, hauled and rafted the various saw logs and cotton wood timber in the original bill described, they also had deadened about 2500 or 3000 cotton wood trees—perhaps more. This deadening was done principally in 1898, and was for the purpose of allowing the timber to dry somewhat before cutting, in order that it would float more easily. These trees so deadened are very valuable, but being dead they are liable to waste and destruction and practical loss by reason of the fact that the worms will eat into them and they will commence to rot unless handled immediately; and in order to utilize said timber and save it from waste and destruction, it will be necessary to have the receiver take charge of the same, in addition to the logs already cut so that they may be cut, rafted and marketed. Unless this shall be speedily done the whole of said trees will be a practical loss.

This fact was not told to your orator's attorneys at the time the original bill was drafted and the Receiver appointed herein—the fact was overlooked at the time.

Your orators further represent and charge that it is important and necessary that, if the Receiver's authority does not extend
66 over the entire island, or property described in the original bill, it is necessary that his Receivership should be extended to the possession of the entire island in order that the timber thereon may be protected from depredation, and protected for the benefit of the parties who may *be* finally prevail in this law suit.

2nd. After the word "Relief" at the end of the fourth paragraph of the prayer of said original bill, and on the fifth line of the twenty-first page, they amend by adding the following prayers:

"Your orators further pray that the powers of the Receiver heretofore appointed by the Court in this cause, be increased and enlarged so that he shall be directed and empowered to have all the deadened timber on said Island 76, cut and converted into saw logs, hauled, rafted and sold for the best price obtainable, and that he have the power and be directed to pay the necessary expenses of cutting and hauling said timber, and the sale of same, out of the proceeds thereof, and report the net balance, and pay same over into the Registry of this Court as heretofore ordered in reference to the saw logs in the original bill described.

They further pray that this amendment may be taken and considered as a part of the original bill herein and that the defendants be required to answer the same, in connection with the said original bill but not under oath, the oath of the said defendants hereto being specially waived.

Your orators further pray as they have heretofore prayed in their original bill of complaint.

And they further pray that the Court may grant all such orders, both general and special, as the facts of this case may require, and for general relief.

(Signed) ROSE, HEMINGWAY AND ROSE,
MYERS AND BANKS,
Solicitors for Complainants.

STATE OF TENNESSEE, *County of Shelby:*

WILLIAM MOORE and J. S. MCFERRIN, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. S. WOODS ET AL.

67 In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

I, Claude H. Moore, being duly sworn state on oath that I am the Assistant General Manager of the complainants in the foregoing and above styled cause and bill of complaint and as such Assistant General Manager, I am well acquainted with the facts stated in the original bill and this amended bill, and that the statements therein contained as made upon my own knowledge are true, and the statements made upon information and belief to be true.

(Signed) CLAUDE H. MOORE.

Subscribed and sworn to before,
[SEAL.] J. W. APPERSON,
Notary Public.

Endorsed: Filed December 26th, 1899. W. P. Feild, Clerk.

And on January 27th, 1900, the following proceedings were had to-wit:—

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes the defendant by J. M. Moore and W. B. Smith, Esqs., their solicitors and by leave of Court file herein their answer.

Which Answer of the defendants is as follows:

of the Eastern District of Arkansas. In Chancery.

W. M. Moore and J. S. McFerrin, Complainants,
vs.
R. J. McGuire et al., Defendants.

Answer.

The defendants reserving the benefit of all manner of exceptions to the many errors and insufficiencies in complainant's bill contained, for answer thereunto, or unto so much thereof as they are advised is material for them to answer, say:

This Court has no jurisdiction of the matters and things set out and alleged in said complaint, because the lands described in complainant's aforesaid bill are not situated within the State of Arkansas, or within the jurisdiction of this Court, and because defendants, nor either of them, are citizens or residents of or found in said district.

Further answering, defendants admit that the lands described in said bill of complaint constitute Island No. 76, situated in the Mississippi River, but they deny that the complainants are the owners in fee of said lands; that they have any interest therein, or that they are, or were, in the legal possession thereof at or before the institution of their aforesaid action.

Defendants have no knowledge in regard to the execution of the several deeds mentioned and set out in complainants' said bill, as constituting the chain of their pretended title, and they deny the execution of said deeds or any of them, or, if said deeds were executed as alleged, that the same conferred title on complainants.

69 They deny that said lands were duly listed and assessed for taxes in Desha County in this state, or that they were legally declared forfeited to the State for taxes, as alleged.

Defendants have no knowledge as to whether the lands described in complainants' bill were embraced in a proceeding instituted by the State of Arkansas in the Circuit Court of Desha County, for the purpose of foreclosing tax liens, under the alleged acts of the legislature, as stated in complainants' aforesaid bill, or as to whether a decree was rendered condemning said lands to be sold, upon the failure to pay certain taxes ascertained to have been due thereon, or as to whether default was made in the payment of such taxes, and a sale under said decree made by a Special Commissioner appointed by the court in the alleged proceeding; and defendants deny the truth of each and every allegation in complainants' bill of complaint contained in respect to the aforesaid proceedings, or of the sale thereunder, or of the purchase of said lands by the said Sallie H. Murphy, and they deny, if such proceeding was had, that the same was valid, or duly conducted in accordance with the provisions of the statutes of the State of Arkansas, or that such sale, if any was made, conferred title upon the purchaser thereat.

They further deny that any valid conveyance was executed in any

such proceeding as is set out in complainants' bill, whereby said [illegible] vested in the said Sallie H. Murphy at and under a sale made by a Special Commissioner appointed by the Circuit Court of Desha County, in Chancery, as alleged in said bill of complaint.

Defendants deny that the said Sallie H. Murphy ever took or had possession of the land described in complainants' aforesaid bill, or that complainants, or either of them, took possession under a conveyance from the said Sallie H. Murphy, and continued to hold possession of said land, as alleged in their bill of complaint.

Defendants have no knowledge as to whether the lands mentioned and described in said bill of complaint have been taxed in the State of Arkansas, or as to whether the taxes thereon have been
70 collected and paid to the State of Arkansas from the year 1847 down to the present time or not, but they deny that said lands were situated within the limits of the State of Arkansas, or were subject to taxation therein, and they are advised and aver that if it be true, as alleged, that any taxes were assessed thereon by the State of Arkansas, and were paid to said state, the same was done without legal authority and did not in any wise affect the question as to the jurisdiction within which said lands were situated.

Defendants admit that it is true, as alleged, that the Territory of Arkansas was admitted into the Union as an independent state by the Act of Congress approved June 15th, 1836, fixing the middle of the main channel of the Mississippi River as the eastern boundary of said state.

It is likewise true that in 1846, W. Pelham, the United States Surveyor General for the State of Arkansas, made a plat of said lands in which the said Island No. 76 and the tracts of land constituting the same were platted, but defendants deny that said plat was, or purported to be, a plat of the State of Arkansas, and allege that the same was a plat of said land, and that it appears from said plat that the said island, and all the lands embraced therein, are situated east of the middle of the main channel of the Mississippi River, and that no part of said island is, in fact, within the limits of said state, and they deny that said island has belonged to or constituted a part of the State of Arkansas, or that the same has been so treated since the year 1847 by any one having authority to determine said question.

Respondents deny that the Act of Congress admitting the territory of Mississippi into the union as a state fixed the eastern bank of the Mississippi River as the western boundary of said state.

Respondents have no knowledge and cannot, at present, answer the allegation contained in said bill of complaint as to the language used by the Legislature of the State of Mississippi in an act alleged to have been passed on February 24th, 1836, and in subsequent acts, for the purpose of establishing and fixing the boundary lines
71 of the County of Bolivar in said State, but they deny that it was the intention or the effect of any act passed by the Legislature of said State to fix the east bank of the Mississippi River as the western boundary of said County.

On the contrary, the respondents state and charge that the Act of

Congress of March 1st, 1817, admitting Mississippi as a state, fixed the middle of the Mississippi River as its western boundary, and the Legislature of Mississippi, in an Act approved February 27th, 1856, and in various other acts, so declared and said State of Mississippi has been in possession of said territory continuously since 1817, exercising juridiction therein.

They deny that at the time of the survey made and filed by Pelham, as Surveyor General for the State of Arkansas, as aforesaid, the main channel of the Mississippi River was east of the property described in said bill of complaint as Island No. 76. On the contrary, they allege that at that time, and long prior thereto, the plats of the official surveys of said Island show the same to have been situated east of the main channel of the Mississippi River.

Respondents say that it is true that the State of Mississippi, in the year 1892, sold and disposed of the lands constituting said Island No. 76, and obtained title thereto under a forfeiture for taxes made long prior to the date of said sale, but it is not true that said State, or any proper official thereof, abandoned the state's claim of jurisdiction over said Island, or conceded that jurisdiction thereof belonged to the State of Arkansas. They deny that any official of the State of Mississippi refunded the purchase money to the purchaser of said property at the sale made thereof by the state as aforesaid, upon the erronous belief that the same was not subject to sale, or that the sale thereof had not been duly or properly authorized; and they aver that any such act or acts on the part of any official of the State of Mississippi, if the same had been done, was unauthorized and ineffectual, for the purpose of altering, changing or affecting the question as to the territorial boundary of said state, or the location of said land in respect to the State to whose jurisdiction it belongs,
72 or even as effecting the title of the purchaser of said land from the State of Mississippi, unless the same had been accompanied by a reconveyance of said land authorized by law from the purchaser thereof to the State of Mississippi.

Respondents deny that in the summer or fall of 1898, the complainants bought said property *bona fide*, and took possession of said Island, established a camp and foundation for tents and houses thereon, as is alleged in their said bill of complaint. They say that when these defendants became the owners of said island, no one was on the same, or in possession thereof, and the defendants, therefore, took quiet and peaceable possession of said property as they had the right to do. The complainants thereafter attempted to take possession of said tracts of land and oust respondents therefrom, and they admit that complainants did over defendants protest, in pursuance of a scheme to acquire forcible and unlawful possession of said land and of the timber growing thereon, set men to cutting the timber growing on said Island, thereby forcing respondents to institute legal proceedings in the courts of the State of Mississippi, for the purpose of recovering timber that had been severed by complainants, and also to institute an action of forcible entry and detainer to obtain possession of said lands, all which proceedings are now pending in the State and Federal Courts of the State of Mississippi.

Defendants deny that said actions are without authority of law, or beyond the jurisdiction of said courts, or that the same were instituted for any other purpose than to enable respondents to protect

stituted for any other purpose than to enable respondents to protect

their title and interest in said lands against the unlawful and fraudulent acts of the complainants.

Defendants deny that either the State of Mississippi or the State of Arkansas claim said lands under the Swamp Land Act passed by Congress, and approved September 24th, 1852. They deny that complainants claim title to said Island No. 76 under a title derived from the State of Arkansas under the Swamp Land Act of 1850, or that respondents are claiming title to said Island through a grant of the State of Mississippi under the Swamp Land acts of Con-
73 gress.

And in that behalf, respondents represent that said lands were duly assessed for taxes in Bolivar County, State of Mississippi, in and for the year 1881, the taxes not having been paid thereon, and said lands having become delinquent, the same were offered for sale and became forfeited to the State of Mississippi, for non-payment of taxes, at a tax sale held in the year 1882, for the non-payment of taxes of 1881, whereby the State of Mississippi acquired title to said lands under and by virtue of said tax proceedings; that on October 26th, 1891, the State of Mississippi conveyed all of Section Thirty-seven (37), Township Twenty-one (21), Range Eight (8) West, to J. T. Curry and M. A. Hull, and on September 28th, 1891, the State of Mississippi conveyed to the same parties all of Section Thirty-six (36), in said township and range. Subsequent to the conveyance of said tracts of land to the said Curry & Hull, they became delinquent for the taxes of the year 189–, and were sold for taxes at a tax sale held in the year 189–, and forfeited to the State of Mississippi; that on August 10th, 1899, said lands not having been redeemed, the State of Mississippi sold and conveyed to Malvina May Scott Lot Six (6) in the South half of Lot Five (5), in Section Thirty-six (36), in the township and range aforesaid, and on the same date sold and conveyed to W. H. Fitzgerald the South half of Lot Eight (8) in said Section Thirty-six (36), and Lot Two (2), in Section Thirty-seven (37), in the township and range aforesaid, and on the same date sold and conveyed to E. M. Scott, Lot Seven (7) in the North half of Lot Eight (8), in Section Thirty-six (36) in the township and range aforesaid, and on the same date sold and conveyed to M. Y. Scott Lots One (1) and Three (3), in Section Thirty-seven (37), in the township and range aforesaid, and on the same date, conveyed to M. A. Yerger Lot One (1), and the North half of Lot Two (2), in Section Thirty-six (36), in the township and range aforesaid; and on the same date, sold and conveyed to E. H. Woods, the South half of Lot Two (2) and all of Lot Three (3), in Section Thirty-six (36), in the township and range
74 aforesaid and on the same date, sold and conveyed to E. S. Woods Lot Four (4), and the North half of Lot Five (5), in Section Thirty-six (36), township and range aforesaid.

That on the 12th day of October, 1899, the said W. H. Fitzgerald, Malvina May Scott, E. M. Scott, M. Y. Scott, M. A. Yerger, E. H.

Woods and E. S. Woods, as the owners of the aforesaid lands under the patents executed to them respectively by the State of Mississippi, as aforesaid, by deed *inter partes*, granted and conveyed, each to the other, an undivided interest in all of said lands, so that all of said parties became joint and equal owners as tenants in common of the aforesaid lands under the conveyances to them severally made by the State of Mississippi, hereinbefore referred to.

Defendants further represent that on the — day of ——, 189–, the said Curry & Hull conveyed said land to the defendant, R. J. McGuire, and that on October 12th, 1899, the said R. J. McGuire, and his co-defendants, held conflicting claims of title under the aforesaid conveyances executed to said parties severally by the State of Mississippi, and for the purpose of compromising and settling the conflicts as to the title held by them respectively, under the aforesaid conveyances, they agreed to and did execute a deed *inter partes*, under the operation of which the said R J. McGuire acquired an undivided one-half interest in all of said lands, and his co-defendants, the said W. H. Fitzgerald, Malvina May Scott, E. M. Scott, M. Y. Scott, M. A. Yerger, E. H. Woods and E. S. Woods, each acquired a one-fourteenth interest in said lands.

Respondents herewith file copies of all the aforesaid conveyances as exhibits to their answer.

And having fully answered the allegations contained in the complaint in this cause, defendants pray that they be hence dismissed with their reasonable costs.

——— ———,
Attorneys for Defendants.

Endorsed: Filed Jan. 27, 1900. W. P. Feild, Clerk.

75 EXHIBIT 1.

THE STATE OF MISSISSIPPI:

This Indenture made and entered into this the 26th day of October A. D. 1891 between the State of Mississippi of the first part and J. T. Currie and M. A. Hull of the second part Witnesseth: That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi for Taxes due the State, the following tract of Land, to Wit;

Division of section.	Section.	Township.	Range.	Acres.
All fract.....	37	21	8 W	185

Situated in Bolivar County, Containing One hundred and Eighty five acres more or less, and whereas the said party of the second part desires to purchase said tract of Land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase said land and paid the sum of Thirty Eight Dollars and seventy five cents. And in Consideration of the premises and the amount paid the State of Mississippi in accordance with the statutes

of the State, the State of Mississippi, has this day bargained, sold and conveyed, and by these presents, does hereby bargain, sell, and convey to the said parties of the second part, their heirs and assignes forever, the aforesaid tract of land as above described, to have and to hold the same to said parties of the second part their heirs and assignes forever. The State — Mississippi hereby Warrants the title to said Lands according to the statu-e in such cases made and provided, and not otherwise. In Testimony whereof these presents are signed, sealed, and delivered, in the State of Mississippi, by W. W. Stone Auditor of Public Accounts; who has hereunto subscribed his name and affixed his seal of office, this the 26th day of October, A. D. 1891.

[L. S.] W. W. STONE,
Auditor of Public Accounts.

Filed for record Nov. 2nd, 1891 at 1.40 o'clock P. M. And truly recorded Nov. 2nd, 1891.

T. R. McGUIRE, *Clk.*
—— ——, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for
76 said County, do hereby certify that the foregoing two pages contain a whole, true and correct copy of Deed or Patent from the State of Mississippi to J. T. Currie and M. A. Hull as the same appears of Record in Book XX. page 24 in my office.

Witness my hand and official seal, this the 11th day of May A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

77 EXHIBIT 2.

No. 6951.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, Malvina May Scott desiring to purchase Lot 6 & S. ½ of Lot 5 of Section 36 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $32.00, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said Malvina May Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D. 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes *A.* M., and that the same was this day recorded in Deed Record Book B 10 at page 42.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

78 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

79 EXHIBIT 3.

No. 6952.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, W. H. Fitzgerald desiring to purchase S. ½ of Lot 8, in Sec. 36 & Lot 2 of Section 37 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, the State of Mississippi, in consideration of the premises, and the sum of $37.25, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said W. H. Fitzgerald the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed
80 Record Book B 10 at page 43.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

81 EXHIBIT 4.

No. 6953.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, E. M. Scott desiring to purchase Lot 7 & N. ½ of Lot 8 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.25, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said E. M. Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes

P. M., and that the same was this day recorded in Deed Record Book B 10 at page 44.

82 Witness my hand and official seal this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*

[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

83 EXHIBIT 5.

No. 6954.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, M. Y. Scott desiring to purchase Lot 1 & Lot 3 of Section 37 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.50, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said M. Y. Scott the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,

[SEAL.] *Land Commissioner.*

Countersigned:

A. J. McLAURIN, *Governor.*

J. L. POWER,

Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 45.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*

[SEAL.] W. A. SHELBY, *D. C.*

84 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k., W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

85 EXHIBIT 6.

No. 6955.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, W. A. Yerger desiring to purchase Lot 1 & N. ½ of Lot 2 of Section 36 Town 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, the State of Mississippi, in consideration of the premises, and the sum of $32.75, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said W. A. Yerger the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 46.

Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

86 Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k., W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

87 EXHIBIT 7.

No. 6956.

Forfeited Tax Land Patent.

State of Mississippi to all to whom these presents shall come, Greeting:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Ferfeited Tax Lands of the State of Mississippi, and whereas, E. H. Woods desiring to purchase the S. ½ of Lot 2 & all of Lot 3 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $31.50 being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said E. H. Woods the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:

A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 47.

88 Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

89 EXHIBIT 8.

No. 6950.

Forfeited Tax Land Patent.

STATE OF MISSISSIPPI:

Whereas, By virtue of the provisions of Chapter 73, Section 2578, of the Annotated Code of the State of Mississippi, approved April 2d, 1892, providing for the sale of the Forfeited Tax Lands of the State of Mississippi, and whereas, Elizabeth S. Woods desiring to purchase Lot 4 & N. ½ of Lot 5 of Section 36 Town. 21 Range 8 W. County of Bolivar, and having complied with all the requirements of the Law in such cases made and provided,

Now Therefore, The State of Mississippi, in consideration of the premises, and the sum of $32.50, being the amount required to purchase said land at the rate of $— per acre, does hereby grant, sell and convey to said Elizabeth S. Woods the lands above described.

Done at the City of Jackson, in the State of Mississippi, this 10th day of August, A. D., 1899.

[SEAL.] (Signed) E. H. NALL,
[SEAL.] *Land Commissioner.*

Countersigned:
A. J. McLAURIN, *Governor.*
J. L. POWER,
Secretary of State.

STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, W. A. Stone, Clerk of the Chancery Court of said County, hereby certify that the annexed instrument was filed in my office for record, on the 12th day of August, 1899, at 5 o'clock and 25 minutes P. M., and that the same was this day recorded in Deed Record Book B 10 at page 41.

90 Witness my hand and official seal, this 7th day of Sept. A. D. 1899.

W. A. STONE, *Clerk.*
[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed for record Aug. 12, 1899, at 5 o'clock, and 25 minutes P. M. W. A. Stone, Cl'k. W. A. Shelby, D. C. Filed Dec. 20, 1905. W. P. Feild, Clerk.

91 EXHIBIT 9.

Deed.

R. J. McGuire *et al* to W. H. Fitzgerald *et al.*

This instrument made and entered into on this the 12th day of October A. D. 1899, by and between R. J. McGuire party of the first part and E. S. Woods, E. H. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald parties of the second part Witnesseth; That whereas the said party of the first part, Claims to be the owners of Island 76 in Bolivar County Mississippi, and whereas the said parties of the second part, Claim to be the owners, of said Island, and whereas all the said parties are desirous of ending said Contention, and in order so to do have agreed to execute this instrument,

Now therefore in Consideration of the premises and the execution of this instrument, the said party of the first part has and does hereby convey, and specially warrant, to the said parties, of the second part an undivided half interest in and to the aforesaid Island, and all timbers situated thereon and all timber thereon whether cut or standing,--and all timber cut heretofore from said Island, and now rafted or floated in the river, or cut off adjacent thereto, to have, and to hold the same to the said parties, of the second part, their heirs, and assigns in fee simple and in consideration thereof the said parties, of the second part have, and doth hereby convey and specially warrant, to the said R. J. McGuire, an undivided half interest in and to said Island, and all timber standing thereon and all timber thereon whether cut or standing and all timber heretofore cut from said Island, and now rafted or floated in the river or cut off adjacent thereto, to have and to hold the same to him his heirs and assignes in fee simple.

In making this conveyance it is distinctly understood and agreed that the said parties of the second part, are to have a first charge against said Island, to reimburse them for the purchase money thereto paid by them to the State of Mississippi as per deed executed by the State—and now recorded in the Chancery Clerk's office in Bolivar County Mississippi and also for the expenses incurred by them, the said parties of the second part in securing said title and in taking and holding possession of said Island through C. L.
92 Jones Jr. who is now on the same as representative of the said parties of the second part, and the sum so due to the said parties of the second part for the above mentioned purchase money and the expenses, it is hereby understood, and agreed, shall be secured by an equitable lien, or Mortgage, which is hereby granted to them *and* said Island for that purpose, and which shall remain, in full force and effect, until the said sum of money is paid.

It is further understood and agreed that the said party of the first part shall have a charge on said Island for the expense incurred by him in and about the purchase thereof and in and about the inforce-

ment of his rights to said Island, and said timber, which expenses do not exceed in all, the sum of One hundred and twenty five Dollars, and to secure the same, an equitable lien was granted, to the said first party, on the aforesaid Island, which shall remain, in full force and effect, until the said sum- so expended by the said party of the first part, are repaid to him.

It is distinctly understood and agreed, that no Lawyer fee shall be Counted by either party, and that the aforesaid sum due to said parties respectively, shall be paid in one year from this date, or earlier than that if the proceeds from the sale, of aforesaid Island or any of said timber, shall be sufficient for that purpose.

The said Island is situated in Bolivar County, Mississippi as is more particularly described as follows to wit:

Lots 1. 2. 3. 4. 5, 6, 7 and 8, Sec. 36 and

Lots 1, 2, and 3 Sec. 37, in Township 21 Range 8 West.

Witness *and* signatures, this instrument being executed in duplicate on this the 12th day of October, A. D. 1899.

R. J. McGUIRE.
E. M. SCOTT.
W. A. YERGER.
M. Y. SCOTT.
E. S. WOODS.
M. M. SCOTT.
E. H. WOODS.
W. T. FITZGERALD.

Rev. Stamp $2.50.

93 STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me the undersigned S. A. Hinds a Justice of the Peace in and for said County, and State the within named R. J. McGuire, and the within named E. S. Woods, E. H. Woods M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H Fitzgerald who severally acknowledge that they each signed and delivered the foregoing deed and agreement, as their several acts and deed on the day and year therein mentioned.

Witness my signature (there being no official seal) on this the 16th day of October, A. D. 1899.

S. A. HINDS,
Justice of the Peace.

STATE OF MISSISSIPPI, *County of Bolivar, ss:*

Personally appeared before me W. A. Stone, Clerk of the Chancery Court of the County of Bolivar the above named R. J. McGuire who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given Under my hand and seal of said County this 12th day of October, A. D. 1899.

[L. S.]

W. A. STONE, *Clerk.*
W. O. SHELBY, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, E. L. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing Five pages contain a whole, true and correct copy of Deed from R. J. McGuire *et al.* to W. H. Fitzgerald *et al.* as the same appears of record in Book D page 319 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

94 EXHIBIT 10.

Deed.

J. T. Currie to R. J. McGuire.

In consideration of One Dollar to me cash in hand paid the receipt of which is hereby acknowledged, I hereby convey and forever quit-claim to R. J. McGuire all my right title and interest no matter how acquired in and to sections thirty six and thirty seven, township 21 range 8 west. (sects. 36 and 37, T 21, R. 8 W.) in Bolivar County, Mississippi known as Island 76.

Witness my signature this Sept. 1899.

J. T. CURRIE.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before the undersigned officer authorized by the laws of Mississippi to take and certify acknowledgments. J. T. Currie who acknowledged that he signed and delivered the foregoing deed on the day and year therein mentioned.

Witness my hand and seal of office this the 12th day of September 1899.

[OFFICIAL SEAL.] H. H. O'BANNAN, *J. P.*

Filed for record September 13th at 2:20 O'Clock P. M. and truly recorded Sept. 13th 1899.

W. A. STONE, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing One page contains a whole, true and correct copy of Deed from J. T. Currie to R. J. McGuire as the same appears of record in Book D[3] page 364 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

95 EXHIBIT 11.

Deed.

N. B. Hull to R. J. McGuire.

For and in consideration of One Dollar to *me* cash in hand paid *me* hereby convey and quitclaim to R. J. McGuire all our right title and interest whether acquired by deed, deed in trust Mortgage or otherwise in and to the following described lands situated in Bolivar County, Mississippi to wit:

Sections thirty six (36) and thirty seven (37) township twenty one (21) range Eight (8) west.

Witness our signatures this August 26th, 1899.

MARTHA A. HULL,
By N. B. HULL.
N. B. HULL.

STATE OF MISSISSIPPI, *Washington County:*

Personally appeared before the undersigned, Justice of the Peace N. B. Hull who acknowledged that he signed and delivered the foregoing instrument of writing on the day and year therein mentioned.

Witness my signature this 12th September, 1899.

[SEAL.] H. H. O'BANNON, *J. P.*

Filed for record Sept. 13th, 1899. at 2:20 O'Clock P. M. and truly recorded Sept. 13th, 1899.

W. A. STONE, *Clerk.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing One pages contain- a whole, true and correct copy of Deed from N. B. Hull to R. J. McGuire as the same appears of record in Book D[3] page 364 in my office.

Witness my hand and official seal, this the 11th day of May, A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

96 EXHIBIT 12.

Deed.

E. H. Woods to W. H. Fitzgerald.

This indenture made and entered into on this the 12th day of October, A. D. 1899 by and between the respective parties below mentioned, each dealing with all of the others, Witnesseth, that whereas the said parties heretofore purchased from the State of Mississippi, the lands hereinafter described, which lands constitute what is commonly known as Island 76, and, whereas the said parties find it to their mutual interest that they shall own the said Island as tenants in common, each owning an undivided one seventh interest therein instead of owning the same in severalty, as at the present time.

Now therefore in consideration of the premises, and the execution of this instrument which is intended to place the title as above mentioned each of the undersigned parties has, and doth hereby convey each of the other parties to this instrument an undivided one seventh interest in and to that part of said Island 76, that now belongs to the said grantor as shown by deed or patent from the State of Mississippi duly recorded in Deed Book B[10] in the County of Bolivar situate in said State, to have and to hold the interests herein conveyed to the respective grantees in fees simple forever.

The true interest and meaning of this conveyance is as above stated, that each of the undersigned parties shall be and they are now vested with a legal title to an undivided one seventh interest in and to all of the lands constituting said Island 76, and such interest is hereby accordingly conveyed. The said lands are situated in Bolivar County and State of Mississippi, and are otherwise more particularly described as follows to wit:

Lots 1. 2. 3. 4. 5. 6. 7 and 8, Section 36 and lots 1, 2 and 3, Section 37 all in Township 21, Range 8, West. Witness *and* signatures on this the 12th day of October A. D. 1899 there being seven originals of this instrument, so that each of said grantees may hold a copy thereof.

E. H. WOODS.
W. H. FITZGERALD.
E. M. SCOTT.
97 W. A. YERGER.
M. Y. SCOTT.
E. S. WOODS.
M. M. SCOTT.

STATE OF MISSISSIPPI, *Bolivar County:*

Personally appeared before me S. A. Hinds a Justice of the Peace in and for said State and County the within named E. S. Woods, E. H. Woods, M. M. Scott, M. Y. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald who severally acknowledge that they each signed and delivered the foregoing deed, as the several act- and deed- of each of them on the day and year therein mentioned. Witness my signature (there being no seal of office) on this, the 16th day of October A. D. 1899.

S. A. HINDS, *J. P.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County do hereby certify that the foregoing Three pages contain a whole, true and correct copy of Deed from E. H. Woods to W. H. Fitzgerald as the same appears of record in Book D³ page 412 in my office.

Witness my hand and official seal, this the 11th day of May A. D. 1903.

L. E. EDWARDS, *Clerk.*

Filed Dec. 20th, 1905.
W. P. FEILD, *Clerk.*

98 And on January 29th, 1900, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Now on this day on motion of the defendant it is ordered that the Receiver, Jacob S. Ross, file a report showing upon what evidence he allowed the claim of O. L. Sanders for $1531.38 for cutting and rafting timber in controversy in this cause, and containing a detailed statement of the amount and kind of labor performed by the said Sanders, the date at which and upon whose request or by whose employment the same was performed.

(Signed) JNO. A. WILLIAMS, *Judge.*

And on the same day the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

On this day come the plaintiffs by Rose, Hemingway and Rose, Esqs., their solicitors, and also come the defendants by John M. Moore, Esq., their solicitor and by consent—

It is now ordered that the Receiver heretofore appointed in this cause take possession of the whole of Island No. 76 of the Mississippi River, and that he hold it as such Receiver, subject to the future orders of this Court. And it appearing now that there is a considerable quantity of timber on the Island that has been girdled and is in danger of decay if not cut and utilized at an early day—

It is therefore ordered that the Receiver proceed to cut such timber as may have been girdled, and that he make sale of the same to the best advantage possible for the fund in his hands, and that he report his proceedings under this order to the Court whenever he shall have disposed of said timber.

It is further ordered that before he begin cutting the girdled timber, he notify the parties to this cause, and give them opportunity to examine said timber for the purpose of determining with
99 the Receiver what timber comes within this order.

All the parties to this cause are hereby enjoined from cutting any timber standing on said Island or from disposing of any timber that may have been cut and that may be in the possession or control of said parties or any of them, and it is ordered that any of the parties having in their possession or control any timber that may have been cut on said Island, deliver the same to the Receiver.

(Signed) JNO. A. WILLIAMS, *Judge.*

And on March 23rd, 1900 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the defendants by J. M. Moore, Esq., their solicitor, and file herein their Exhibits numbered from one to twelve, both inclusive, to answer heretofore filed herein.

Which Exhibits to answer are as follows, to-wit:

(See Exhibits following answer Folio 75 this Record.)

100 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of

Arkansas, begun and holden on Monday, the 9th day of April anno Domini, One Thousand Nine Hundred, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable John A. Williams, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on July 2nd, 1900.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors, and file herein their replication.

Which replication is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the plaintiffs and by way of replication they say that the answer of the said defendants is not true in fact or good in law, and that their said bill and amendment filed herein are both good and sufficient in law and true in fact, as they will maintain and prove to the Court at such time and place as the Court may direct.

(Signed) ROSE, HEMINGWAY AND ROSE,
For Plaintiffs.

Endorsed: Filed July 2nd, 1900, W. P. Feild, Clerk.

101 & 102 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 22nd day of October anno Domini, One Thousand Nine Hundred, at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on November 5th, 1900.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Now on this day come the plaintiffs by Rose Hemingway and Rose, Esqs., their solicitors and also come the defendants by J. M. Moore and W. B. Smith, Esqs., their solicitors and by consent of the parties—

It is now ordered that this cause be set for final hearing on the Fourth Tuesday of March, 1901, and that both parties have leave to take depositions in this cause until that day.

(Signed) JACOB TRIEBER, *Judge.*

* * * * * * *

103 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remembered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, beg in and holden on Monday, the 21st day of October anno Domini, One Thousand Nine Hundred and one at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on January 2nd, 1902.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose and Myers and Banks, Esqs., their solicitors and come the defendants by Chas, Scott, Woods and Scott, Esqs., their solicitors, and file herein their agreement of counsel, which is in the words following to-wit:

United States Circuit Court, Eastern District of Arkansas, Western Division.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Agreed by Counsel in this cause;

1st. An abstract of title duly filed by the manager of any abstract office for making abstracts of the lands in controversy may be received in evidence on the hearing, unless one or the other parties shall object to a particular conveyance, and shall require its produc-

tion by notice given twenty days before the trial of the cause. Either party however, desiring to use such abstract of title shall furnish copy of same to the opposite party twenty-five days before said trial.

104 2nd. Certified copies of letters that pass between the United States, the Commissioner of the General Land Office and the Attorney General of Mississippi, may be read as evidence in this case without objection by either party, except as to relevancy and competency, and either party may object to said letters on the above grounds alone, this agreement being merely intended to waive the mere matter of form in the manner of trying to introduce them as evidence.

(Signed) CHAS. SCOTT,
WOODS AND SCOTT,
Sol's for Def'ts.
MYERS AND BANKS,
Of Counsel for Complainants."

105 The following Abstract and letters were introduced and read by the Complainants at the final hearing of this cause.

106 *Abstract of Title Prepared for Meyers & Banks, Att'ys, by Dickinson & Jones, Abstracter- of Titles, Arkansas City, Ark.*, 10, '7, 1899.

Description of Property under Examination in Desha County, Ark.

Sec. 35, T. 11 S., R. 1 E, 94.12 acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year				Parts of Section.	Sec.	Town'p.	Range.	Area.	
		5	11	1829	6	23	1847	U. S.	State of Ark		N E ¼ on island	35	11	1 E	94.12	S. S. Act, Sept. 28, 1850, App. 5 | 7 | 1858.
									Joseph Dempsey		S E ¼					
D	205	1	31	52	1	31	52	Joseph Dempsey	B. B. Bartholow	W. D.	S E ¼ frl ¼					
"	316	9	24	52	12	15	53	Geo. S. Crane, ald	Wm. & David Williams	" "	S W ¼ "					
"	454	3	17	54	3	10	54	B. B. Bartholow & wife	W. & D. Williams	" "	S E ¼ "					
E	110	10	28	54	1	4	55	W. & D. Williams & wives	J. H. M Neblett	" "	N E " Island 76					Other lands included.
H	410	3	29	60	3	31	60	J. H. M. Neblett	C. H. Craig	" "	S E ¼ frl					
C no	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam and F. A. Poggle.	" "	S E ¼ "					
No 2	142	8	14	75	8	14	75	Jno M. Grayson, clk	State of Ark	Clk deed.	N E frl ¼					For taxes 1871.
No 6	577	4	1	86	2	28	87	J. S. Ross, com'r	Mrs. S. H. Murphy	Com. D.	E ½ "					Overdue taxes sale.
" 11	293	8	22	98	8	27	98	Mrs. S. H Murphy	Moore & McFerren	W. D.	All frl Sec. 35					Lien retained.
As	134	8	12	98	8	15	98	State by Ritchie, com'r	Mrs. S. K. Murphy	Pat.	N E fl ¼					

Description of Property under Examination in Desha County, Ark.

Sec. 36, T. 11 S., R. 1 E., 269.84 Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		6	23	1817	...	...	....	U. S.	Geo. S. Crane	(5030)	S. E. 1841 N E f'l ¼	36	11	1 E	269.84	
		7	17	47	...	...	.....	U. S.	Geo. Jeffries	(5747)	S E ¼ on island					
		7	26	47	...	...	.....	U. S.	Geo. S. Crane	E ½ S W ¼	E ½ S W ¼					
		6	23	47	...	...	.....	U. S.	Joseph Dempsey	(5029)	W ¼ S W ¼ sec. 36 and S E ¼ sec 35,					
D	205	1	31	52	1	31	52	Josaphine Dempsey	B. B. Bartholow	W. D.	W ½ S W ¼ fl					
D	316	9	21	52	12	15	53	Geo. S. Crane & W.	Wm. & D. Williams	W. D.	N ½ fl & S W ¼ Isl 76					
"	454	3	7	54	3	10	54	B. B. Bartholow & wife	Wm. & D. Williams	"	W ½ of S W ¼ f'l					
H	410	3	29	60	3	31	60	J. H. M. Neblett	C. H. Craig	"	N ½ fl & S W ¼ fl					
C No	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam and F. A. Poggle.	"	W ½ W ½ S W ¼ & S W ¼ fl. N W ¼ & S W ¼ fl.					
No 2	158	8	14	75	8	14	75	Jno. L. Grayson clk	State of Arkansas	Clk D.	W ½ S W ¼ & W fl ½ of N W ¼.	.....	.....	.....	.....	Forfeited for taxes 1872 vs. J. M. Pinell
N 4	54	6	14	79	6	14	79	J. P. Jones clk	" " "	" "	N W ¼ & S E ¼ & E ½ of S W ¼	.....	.....	.....	.....	Forfeited for taxes
No 6	577	4	1	86	12	28	87	J. S. Ross com'r	Mrs. S. H. Murphy	Com'r D.	N W ¼ & S ½	.....	.....	.....	.....	Overdue tax sale
No 11	293	8	22	98	8	27	98	Mrs. S. H. Murphy	Moore & McFerrin	W. D.	All of sec 36	.....	...	.....	.....	Lien retained.

108 *Abstract of Title Prepared for Meyers & Banks, Att'ys, by Dickinson & Jones, Abstracter- of Titles, Arkansas City, Ark.*, 10/7, 1899.

Description of Property under Examination in Desha County, Ark.

Section 1, T. 12 S., R. 1 E., 155 $\frac{11}{160}$ Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of Inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.					Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		7	17	47	...	...	.....	U. S	Jno. R. Wilkinson	(5143)	N E fr'l ¼ (in Isl.)	1	12	1 E.		
		7	17	47	...	...	.....	U. S.	" " "	(5244)	N W fr'l ¼ (in Isl.)					
		7	17	47	...	...	.....	U. S	Jno. J. Lovin	(5745)	S W fl ¼ (in Isl.)					
C no.	496	11	3	70	12	9	70	Andrew Frau	H. B. & C. F. Putnam & F. A. Poggle.	W. D.	S W fl ¼ (in Isl.)					
No. 4	54	6	14	79	6	14	79	J. P. Jones Cl'k	State of Ark	Cl'k's D.	Fr l Sec.	.....	...	.....	.....	Forfeited for taxes.
No. 6	577	4	1	86	2	28	89	J. S. Ross Com'r	Mrs. J. H. Murphy	om'r's D	Fr'l Sec.	.....	...	.....	.....	Overdue tax sale.
No. 11	293	8	22	98	8	27	98	Mrs. S. H. Murphy	Moore & McFerrin	W. D.	Fr'l Sec.	.....	...	.....	.....	Lien retained.

Description of Property under Examination in Desha County, Ark.

Section 2, T. 12 S., R. 1 E., 261 $\frac{55}{100}$ Acres.

When the consideration, acknowledgment, and release of dower in any conveyance described in this abstract are good, no mention of that fact is made. Defects are noted on margin under head of "Remarks."

Record.		Date of inst.			Date of filing.			Grantor.	Grantee.	Instrument.	Description.				Remarks.
Book.	Page.	Month.	Day.	Year.	Month.	Day.	Year.				Parts of section.	Sec.	Town'p.	Range.	Area.	
		7	17	1847	...	...	.....	U. S.	Jno. J. Lovin	(5146)	N ½ N E ¼ f'l (in Island)	2	...	1 E		
		7	10	1 47	...	...	.....	U. S.	Jno. J. Lovin	(5078)	S. E f'l ¼ & S ½ N E f'l ¼					
		...	...	.....	...	...	.....	U. S	State of Ark.	.....	S W f'l ¼ (in Island)	...	...	...	.....	S. S. Act Sept. 28, 1850 App. 5 1 7, 1858.
C no.	496	11	3	1 70	12	9	1 70	Andrew Frau	H. B. & C. F. Putnam & F. A. Poggle.	W D	S E f'l ¼ of S E ¼ & N W ¼					
No. 2	132	8	14	1 75	8	14	1 75	J. N. Grayson Cl'k	State of Ark.	Cl'k's D.	E ½ f'l & S W ¼	.....	...	.....	.....	Forfeited tax 1869 & '70 & Pindall & Randolph.
No. 4	54	6	14	1 79	6	14	1 79	J. P. Jones C'lk	State of Ark.	" "	S ½ & N E ¼ & N W f'l ½	.....	...	.....	.....	Forfeited tax.
No. 6	577	4	1	86	2	28	87	J. S. Ross Com'r	Mrs. S. H. Murphy	Com'r's D	Fr'l Sec.	.....	...	.....	.....	Overdue tax sale.
No. 11	286	10	10	1 93	8	16	98	Jo. Evans & wife	Mrs. S. H. Murphy	Q. C.	S W ¼ f'l	.....	...	.....	.....	
No. 11	293	8	22	1 96	8	27	98	S. H. Murphy	Moore & McFerrin	W D.	All of Sec.	.....	...	.....	.....	
A. A.	134	10	29	1 90	8	15	98	State by Meyers' Com'r	Jo. Evans	Pat.	S W ¼ fr'l	.....	...	.....	.....	

Endorsed.

ARKANSAS CITY, ARK., 10/7, 1899.

We hereby certify that we have carefully examined the records in the offices of the county and circuit clerks and recorder of Desha County Ark. as to Secs. 1 & 2 T. 11 S. R. 1. E. & Secs. 35 & 36 T. 12 S. R. 1. E. as per the 4 pages within, and the within is as we believe, a correct abstract of all the conveyances or other instruments of record affecting the title to said lands, & that the title to the same is legally vested in Messrs. Moore & McFerrin.

DICKINSON & JONES, *Abstracters.*
J. W. DICKINSON.
BEN G. MEEKS, *C'lk.*

J. W. Dickinson says he believes this abstract is correct.
Subscribed & sworn to this May 5, 1902.
Filed Dec'r 20, 1905. W. P. Feild, clerk.

5—222

R. J. MC GUIRE ET AL.

65

110 MARCH 23RD, 1904.

Hon. William H. Simms, First Assistant Secretary of the Interior Department, Washington, D. C.

MY DEAR SIR: The question whether Island No. 76 in the Mississippi River belongs to the State of Mississippi or to the State of Arkansas.

The Island is in a survey made by each of these States, reported to the General Land Office, though it was sold to private persons by the United States Government through the Land Office at Little Rock.

From the information given me, but which is not conclusive this Island was originally on the Western side of the thread of the stream, though it is now east of the channel.

I would esteem it an official as well as a personal favor if you will give me all the light that you can on the subject. There may be some maps or river surveys, showing the precise position of the island originally in your department.

Your attention at your earliest convenience will be highly appreciated.

Very Sincerely Yours, FRANK JOHNSON,
Att'y Gen. of Miss.

THE STATE OF MISSISSIPPI, *Hinds County:*

I certify that the above writing is a true and correct transcript of pages 183 and 184 of the official letters of the Attorney General of Mississippi from January 11th, 1894, to June 23rd, 1894, now in my official keeping in said office at Jackson, Mississippi. This office has no official seal.

(Signed) MONROE McCLURG,
Attorney General of the State of Mississippi.

Endorsed: Filed December 15th, 1905. W. P. Feild, Clerk.

111 Refer in reply to this *e*nitial: "C"

33111-94

W. O. C. J. W. B.
J. V. W. M. A. M.
E. M. M. R. K. G.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 6th,* 1894.

Hon. Frank Johnson, Attorney General of Miss.

SIR: Ackowledging the receipt, by Department reference, of your letter of March 23rd, 1894, in which you request to be furnished with all the light on the subject of the ownership of Island No. 76 in Mississippi River, I have to state that as shown by the records the gr-ater part of said Island was disposed of in 1847, at Helena, Arkan-

sas, by cash purchase, and the remainder was approved to the State under the Swamp Land Grant on May 7th, 1858. It was also approved to the State of Mississippi September 24th, 1852 under said grant.

I herewith enclose a copy of letter of Feb. 28, 1855, in relation to the jurisdiction of the State of Arkansas and Mississippi over the Island in question and giving facts in relation to the survey in each state.

There are no plats or maps or river surveys, showing the precise position of the island originally in this Department.

Very respectfully,

(Signed) EDW. A. BOWERS,
Assistant Commissioner.

This is the original letter written to me by Edward A. Bowers which I sent to Hon. W. W. Stone, Auditor with my opinion.

(Signed) FRANK JOHNSTON.

May 13th, 1902.

Endorsed: Filed December 15th, 1905. W. P. Feild, Clerk.

112 The following letters were introduced and read by the defendants at the final hearing of this cause.

113 1902.—77,913. A. V. F.
"C."
E. M. M.
G. E. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May 13th,* 1902.

I, Binger Herman, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter from Governor of Mississippi, of May 3rd, 1859, (with copies of the inclosures therein), is a true and literal exemplification of the same on file in this office, and the annexed copies of office letters relative to Island No. 76 in Mississippi River, of dates as follows: February 28th, 1855, to Hon. Jacob Thompson; July 23rd, 1859, to Governor of Mississippi and June 27th, 1896, to Register and Receiver at Jackson, Mississippi are a true and literal exemplification of the record of such letters in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written..

[SEAL.] (Signed) BINGER HERMAN,
Commissioner of the General Land Office.

EXECUTIVE OFFICE,
CITY OF JACKSON, MISSISSIPPI, *May 3rd*, 1859.

Hon. Jacob Thompson, Sec. of the Interior.

DEAR SIR: Island 76 (sometimes called Bolivar Island) was confirmed to the State by the Federal Government and afterwards sold to William G. Ford. I am informed that this island is now claimed by the State of Arkansas. The enclosed letters from Major Downing and William Ford, with the certificate of the Secretary of the State, contain all the information in my possession on the subject. You are hereby requested to adjudicate the case, and to conform or sustain the title of W. Ford through the grant to this state.

Very respectfully, W. McWILLIE.

114 Ctf. of Secretary of State above referred to to W. G. Ford with letter of June 28th, 1866. Curtis.

Endorsed: Gov. W. McWillie, Jackson, Miss., May 3rd, 1859. E. 95,845. Desires a decision in relation to Bolivar Island confirmed to Mississippi by the General Government, then sold to William G. Ford, and never claimed by the State of Arkansas. Encloses letters from Major Downing, Mr. Ford and the certificate of the Secretary of State.

INTERIOR DEPARTMENT, *July 23rd*, 1859.

Received, referred to the Commissioner of the General Land Office. 7/508. R. Allan.

W. W. LESTER,
Acting Chief Clerk.

Received 11 May 59. M. Beard.
See letter of Gov. McWillie, July 23rd, 1859.
Referred K. M. Skinner, July 29/59. Allan.

MEMPHIS, TENN., *April 29th*, 1859.

Hon. Wm. McWillie, Gov. of State of Miss., Jackson, Miss.

DEAR SIR: On the 29th day of January, 1854, I purchased from the State of Mississippi and received her patent for section thirty-six and thirty-seven in Township twenty-one, Range eight West (908.58 acres) known as Island 76 as surveyed in Mississippi. The jurisdiction of the Island is claimed by Arkansas and it has been disposed of as public domain within the limits of that State. There is no evidence of a shadow of title to the State of Arkansas and the lands embraced in these sections 36 and 37 have been confirmed—seven or eight years since—as swamp lands to the State of Miss., but the State has never received or claimed a patent therefor under that confirmation. The land bureau at Washington cannot know, nor has any one the right to invoke its action save the State of Mississippi. The land was given to the State. The Governor alone can make up
115 the case by claiming a patent to the State of Mississippi for the island upon such evidence as he is possessed of. I enclose

a statement of Maj. Downing as evidence of the claim of the State of Mississippi which with whatsoever other evidence you may be possessed you will do me the favor to have forwarded to the Department at Washington in your application in behalf of the State.

With this brief prelude, allow me to trespass upon your attention in so much as to ask your early official interposition.

With high regard, respectfully yours,

W. G. FORD.

JACKSON, *Jan'y* 18, 1850.

William G. Ford, Esq.,

DEAR SIR: In answer to your inquiry in relation to Island No. 76 or Bolivar Island as it is often called; its proximity to the eastern shore of the Miss. River at the time when it was surveyed by the United States Deputy Surveyor and before and since that time I have to say that I have for over thirty years been traveling up and down the Miss. River. Island 76 was surveyed I think in 1830 or 31 as a part of township 21 Range 8 West at that time and for some years after the Island Chute as it was called was quite narrow. I think that about opposit- the middle of the Island the chute was not over one hundred yards wide. I have been told that deer had been and could ea-ily be shot from the eastern shore of the river upon the Island and from my own observation I have no doubt but they could for at that time I never heard of a steamboat going up or down on the east side of the island. The main River then passed on the west side of the Island.

I think it was in 1835 I spent some time in T. 21 R. 8 W. examining the land in that township. The east bank of the river opposite the Island had not fallen in much. The Island Chute at that time was quite narrow.

Respectfully A. DOWNING.

116 GENERAL LAND OFFICE, *February* 28, 1855.

Hon. Jacob Thompson, Washington, D. C.

SIR: As regards Island 76 in the Mississippi River to which you called my attention yesterday in conversation in connection with the question of jurisdiction over the same by the States of Mississippi and Arkansas, I have to state:

That it appears on referring to the plats in this office Island No. 76 *has* surveyed by the Surveyor General of Mississippi as a part of Township 21 North of Range 8 West of the Choctaw Meridian and Base line returned with his certificate of approval bearing date the — October, 1836, and that the Island No. 76 was surveyed under direction of Wm. Pelham, Surveyor General of Arkansas in February, 1846, as parts of townships 11 and 12 South of Range 1 East of the 5th Principal Meridian in that State and certificate to this office 23d December 1846. The Island does not appear to have been offered at public sale in either State.

I am of the opinion from the inspection of the plats that the Island in question belongs to the jurisdiction of Mississippi and

should not have been returned and surveyed as lying in the State of Arkansas. Still I must qualify this opinion by stating that if it should be found by measurements and evidence taken on the spot that the middle of the main channel of the river as it existed in the year 1817, the date of the Act of admission of the State of Mississippi, prescribed her boundaries was situated East of the Island and remained unchanged until the year 1836 the date of the Act of admission of Arkansas as a State, then the Island undoubtedly belongs to the latter. But if in 1817 the middle of the main channel was East of the Island, and in 1836, by changes in the bed of the River was West of the Island, then it will occupy the peculiar position of not being within the limits of either State, according to the boundaries prescribed by the Acts of admission.

117 I am very respectfully
Your obedient servant

JOHN WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July* 23, 1859.

His Excellency Wm. McWillie, Governor of Mississippi, Jackson, Miss.

SIR: Your letter of 3rd May, relating to Island No. 76 in the Mississippi selected by the State of Mississippi under the Swamp Grant of September 28, 1850, has been referred to this office by the Secretary of the Interior.

This Island is claimed by William G. Ford, Esq., as a purchaser from the State, and you desire that his title thereto may be sustained by the confirmation of the Island to the State. As it appears on reference to the plats in this office, this Island was surveyed by the Surveyor General of Mississippi as a part of T. 21 N., R. 8 W., Choctaw Meridian, Mississippi, and returned with his certificate of approval under date of October, 1836. It also appears that under direction of the Surveyor General of Arkansas, this Island was surveyed in February 1846 as a part of T. 11 and 12 S., R. 1 E., Helena District, Arkansas, and returned with certificate of approval dated Dec. 23, 1846.

A proclamation for the sale of the lands in the Helena district including this Island was made and the tracts on said Island were duly offered for sale on the 12th day of July 1847. Subsequently greater portion of the tracts were entered, and patents were issued to the purchasers prior to the 28 Sept., 1850, the date of the Swamp Grant. The Island as situated within the limits of the *limits of the* State of Mississippi has never been proclaimed for sale.

The question of State jurisdiction over this island was presented to my predecessor, and he in a communication of the 28th

118 Feb. 1855, says:

I am of the opinion from the inspection of the plats that the island in question belongs to the jurisdiction of Mississippi, and

should not have been surveyed and returned as lying in the State of Arkansas. Still I must qualify this opinion by stating that if it should be found by measurement and evidence taken on the spot that the middle of the main channel of the river as it existed in the year 1817, the date of the act of admission of the State of Mississippi prescribing her boundaries was situated East of the Island and remained unchanged until the year 1836, the date of the Act of admission of Arkansas as a State then the Island undoubtedly belongs to the latter.

Under this view of the case if satisfactory proof shall be presented to this office that the middle of the main channel of the River in 1817 was on the West of said Island the jurisdiction thereof properly belongs to Mississippi, and in that event the title of the lands from the Government of the United States having vested in the purchasers as within the State of Arkansas, I am of the opinion that the State of Mississippi in virtue of her right under the Swamp Grant of 1850, should receive from the General Government an indemnity in kind equivalent to that received from the purchasers.

With your letter I find the statement of A. Downing, dated 18 Jan'y, 1859, going to show that Island 76 belongs to the *Mississippi* side and falls within our limits as defined by the treaty of 1783. Mr. Downing was formerly Surveyor General of Mississippi and great reliance is to be placed on his statement. If therefore you will add to it his affidavit with the testimony of any other disinterested witness so as to bring the matter within the qualifications of my predecessor's opinion, and stating that the Island is of a swampy character. Such is the additional testimony contemplated by Sec'y McClellans's decision as required by the 2nd Section of the Act of 2nd March, 1855, notwithstanding the Island has been reported as swamp, the testimony will then be fully of equal grade to that required in analagous cases, and thereupon an account will be opened between the State and the United States with a view to her reimbursement by Treasury Warrant to the amount of cash which the United States by sale have received therefrom, and in case of the location of any part of the Island by warrants or scrip a certificate to that amount, authorizing the selection of other lands subject to entry at $1.25 per acre will be issued, such being the mode on indemnity prescribed by the 2nd Section of the Act of 2nd March, 1855, in cases where the lands taken by the swamp grant have been disposed of by the United States.

With great respect, Your ob't serv't

THOS. A. HENDRICKS, *Comm'r.*

Address only the Commissioner of the General Land Office.

119 K. S. W. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 27, 1896.

E. M.
W. O. C.
J. V. W.

Register and Receiver U. S. Land Office, Jackson, Miss.

SIRS: The plat of survey of T. 21 N., R. 8 W., Choctaw Meridian approved in 1836, shows Island No. 76 in the Mississippi River, to

be designated as Sections 36 and 37, containing 674.20 and 234.38 acres respectively, but such sections or lots are not subdivided into smaller tracts.

Island No. 76 was also surveyed under the direction of the U. S. Surveyor General, for the District of Arkansas, and *and* the plat of such survey was approved October 23rd, 1846. The plat of such survey shows the main channel of the river to be West of the Island and consequently the Island is in Mississippi. The plat approved October 23, 1846 shows Island No. 76 to be in Secs. 35 and 36, T. 11 S., R. 1 E., and in Secs. 1 and 2, T. 12 S., R. 1 E., 5th Principal Meridian. The lands on said Island disclosed by the Arkansas survey, were all disposed of in 1847, with the exception of the N. E. fractional quarter of Sec. 35, T. 11 S., R. 1 E., containing 35.92 acres, which tracts were approved to the State of Arkansas, as swamp land, January 7, 1858.

The lands on said Island as shown by the survey of 1836 in T. 21 N., R. 8 W., were selected by the State of Mississippi as swamp land, June 12, 1852, List No. 1, and approved as such September 24, 1852, List No. 1 Grenada series. No part of the Island has been patented to either state as swamp land.

It is not necessary to consider the question of the irregularity of either survey. It is sufficient to state that the United States disposed of all of the land except 51 acres prior to Sept. 28, 1850, and consequently the tracts so disposed of were not granted by the swamp land Act of that date.

It is the intention of this office to submit the matter
120 & 121 to the Secretary of the Interior, with the recommendation that approval of so much of said approved swamp land list No. 1, Grenada Series, as related to the Island in question be revoked. At the same time a new list, containing the 51 acres referred to: (N. E. Fractional quarter Sec. 35, T. 11 S., R. 1 E., and S. W. fractional quarter Sec. 2, T. 12 S., R. 1 E., 5th P. M.) will be submitted for approval to the State of Mississippi.

You will advise the Governor of the condition of the case and of the proposed action and allow him sixty days in which to object thereto, if he desires so to do, and in due time you will make full report in the premises to this office.

Very respectfully,

E. F. BEST,
Acting Commissioner.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

* * * * * * *

122 Which report of the Receiver is as follows:

In the United States Circuit Court, Western Division of the Eastern District of Arkansas.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

123 Comes J. S. Ross, the Receiver heretofore appointed herein, and begs leave to submit this his report and statement of account showing his action in pursuance of the order of this Honorable Court made and entered on January 29th, 1900, in reference to cutting the girdled timber on the land in controversy in this cause:

That on March 13th, 1900, I made a contract with O. L. Sanders for the cutting of said girdled timber, there being about twenty-five hundred trees on said land, which contract is in words and figures as follows:

"ARKANSAS CITY, ARK., *March 13th*, 1900.

This agreement made this 13th day of March, 1900, between J. S. Ross, Receiver, party of the first part, and O. L. Sanders, party of the second part:

Witnesseth, said O. L. Sanders party of the second part, agrees to cut and float and deliver all cotton wood timber now belted on Island 76, County of Desha and State of Arkansas. Said timber to be delivered at Arkansas City at $3.00 per thousand, Scribner and Dale Rule.

(Signed) J. S. ROSS. [SEAL.]
O. L. SANDERS. [SEAL.]

Witness:
F. C. WEISEL.

And at the same time I sold said timber to Moore and McFerrin at $4.10 per M. they to receive the timber according to the measurements made for said Sanders they to pay the said Sanders as the said timber was delivered and the balance to this Receiver. A detailed statement of my said actions under said order and contract is as follows:

Date.	No. of logs.	No. of feet.	Paid Sanders.	Balance to receiver.
6/22/1900	674	150,836	$452.50	$165.90 V. 1
7/19/1900	599	117,582	352.73	129.33 V. 2
8/6/1900	634	118,437	355.30	130.27 V. 3
9/10/1900	1373	272,288	816.86	299.50 V. 4
9/29/1900	511	100,793	302.37	110.88 V. 5
10/17/1900	1009	186,530	559.05	204.98 V. 6
11/15/1900	725	111,108	333.32	122.22 V. 7
7/22/1901	1920	278,377	835.13	306.20 V. 8
1/15/1902	4586	695,573	2851.85	765.13 V. 9

The timber shown by voucher nine was scaled up before delivery at Arkansas City, part still being in the woods. Sanders having failed in his contract, Moore and McFerrin, the purchasers, agreed to take the timber (Logs) where it lay at the net price $1.10 per M and deliver it at Arkansas City at their expense. This makes a total of $2234.41 net proceeds from the sale of said logs.

In connection with the sale of said logs I uncurred the following personal expense:

124	2/24/1900. Trip on boat to Island and return....	$4.00
	2/25/1900. Trip on boat to Island and return....	4.00
	3/10/1900. Trip on boat to Island and return.....	4.00
	6/2/1900. Trip on boat to Island and return.....	4.00
	8/5/1900. Ferriage across river $1.00 horse hire $2.00...	3.00
	2/4/1900. Ferriage across river 1.00 horse hire 2.50...	3.50
	9/20/1901. Trip on boat to Island and return.....	4.00
	1/8/1902. Ferriage on boat 1.00 carriage 4.00.....	5.00
	1/8/1902. Amount paid for labor and help to scale up balance of timber lying in woods.....	14.00
	Expense account Little Rock, filing Report.....	9.30
	Making total of.....	$54.80

so expended and paid out. For these amounts I was unable to take vouchers at the time and ask that said amount be allowed.

This leaves in my hands the sum of $2179.61, which amount I have paid into the Registry of your Honorable Court as heretofore directed.

Having submitted a full report of my Receivership, I ask that my account be closed with such reasonable allowance as your Honorable Court may deem just and proper.

All of which is respectfully submitted.

(Signed) J. S. ROSS, *Receiver.*

October 14th, 1902.

Endorsed: Filed October 24th, 1902. W. P. Feild, Clerk.

* * * * * * *

125 And on December 30th, 1902, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore, Esq., their solicitor, and this cause having heretofore been set down for final hearing on December 31st, 1902, and it being shown to the Court

that said cause cannot be tried on said day and the parties agreeing thereto—

It is now ordered that said cause be and the same is set down for hearing for February 18th, 1903.

And on February 20th, 1903, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It is ordered by the Court, by agreement of parties that this cause be set down for final hearing on March 24th, 1903.

126 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it remenbered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 3rd day of April Anno Domini, One Thousand Nine Hundred and five at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Trieber, U. S. District Judge presiding and holding said Court, the following proceedings were had, to-wit: on October 14th, 1905.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes U. M. Rose, in his own proper person and on his motion it is ordered by the Court that leave be given him to withdraw the files in the above entitled cause from the Clerk's Office upon his executing to the Clerk a receipt therefor.

127 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

Be it Remenbered, That at a Circuit Court of the United States of America, in and for the Western Division of the Eastern District of Arkansas, begun and holden on Monday, the 16th day of October Anno Domin, One Thousand Nine Hundred and five at the United States Court Room, in the city of Little Rock, Arkansas, the Honorable Jacob Treber, U. S. District Judge presiding and holding said Court, the fdlowing proceedings were had, to-wit: on November 17th, 1905.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Ordered, on motion of plaintiffs, that they have leave to retake the deposition of Charles Le. Vassuer as to the width and depth of the channel of the River at Island 76 on the East side thereof.

(Signed) JACOB TRIEBER, *Judge.*

And on November 24th, 1905 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Comes U. M. Rose, Esq., and files herein the written agreement of parties to this cause which is as follows:

"United States Circuit Court, Eastern District of Arkansas, Western Division.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Agreed by Counsel in this cause:

1st. An abstract of title duly filed by the manager of any
128 abstract office for the making of abstracts of title to lands in controversy may be received in evidence on the hearing, unless one or the other of the parties shall object to a particular conveyance and shall require its production by notice given twenty days before the trial of this cause. Either party, however, desiring to use such abstract of title shall furnish a copy of same to the opposite party twenty-five days before said trial.

2nd. Certified copies of letters that pass between the United States, the Commissioner of the General Land Office and the Attorney General of Mississippi may be read in evidence in this cause without objection by either party, except as to the relevancy and competency and either party may object to said letters on the above grounds alone this agreement being merely intended to waive the mere manner of trying to introduce them as evidence.

(Signed) CHAS. SCOTT, WOODS AND SCOTT,
Solicitors for Defendants.
MYERS AND BANKS,
Of Counsel for Complainants.

And on December 7th, 1905 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

Come the complainants by Myers and Banks, Esqs., their solicitors and file herein their exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 to the bill and also their Exhibit C to deposition of Chas. Le. Vassuer.
Which Exhibits to the bill are as follows:

(For Exhibits see page- 18-41 this Record.)

And on December 15th, 1905 the following proceedings were had to-wit:

129 1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and comes the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and this cause now coming on for final hearing upon the bill, amendments thereto, answer, amendments thereto, replications, and all other pleadings, proofs, exhibits and depositions, thereupon the Court proceeds to hear the evidence on the part of the complainants as well as on the part of the defendants, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on December 16th, 1905 the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,
vs.
R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing

hereof not being concluded on yeasterday the same is now resumed, and said complainants by their said solicitors file herein their transcript from Justice Hinds, J. P. of Bolivar County, Mississippi, of unlawful detainer, and the hearing hereof not being concluded the same is continued until Monday Morning at half past nine o'clock. Which transcript is as follows:

130 *Index.*

R. J. McGUIRE ET AL.
vs.
J. W. SHARP.

Unlawful Detainer.

1. Caption from Justice's Docket page 65.
1. Affidavit.
2. Warrant and Return.
3. & 4. Petition for Removal to Circuit Court of the United States for the Western Division of the Southern District of Mississippi.
5. Appeal Bond.
6. Clerk Certificate.
7. Judge and Clerk's Certificate.

131 Proceedings had before, S. A. Hinds, S. M. Seaton and Wm. Arnold Justic-s of the County of Bolivar, and State of Mississippi Organized as a Court of Unlawful Entry and Detainer Under Chapter 142 of the Code of 1892, in the case of R. J. McGuire *et als. vs.* J. W. Sharp as follows.

The following transcript in said suit appears among the papers on file now in my office, in words and figures as follows to wit:

Affidavit.

STATE OF MISSISSIPPI, *County of Bolivar, To wit:*

R. J. McGuire, M. Y. Scott, M. M. Scott, E. H. Woods, E. M. Scott, W. A. Yerger and W. A. Fitzgerald of said county, by their Attorney O. G. McGuire, complains that J. W. Sharp unlawfully withholds from them possession of certain land, to wit:

Lots 1. 2. 3. 4. 5. 6. 7. & 8 Section 36, T. 21, R. 8, W. and Lots 1. 2. & 3 Section 37, T. 21, R. 8 West lying and being in the said county, whereof they pray the possession.

O. G. McGUIRE,
Att'y for the Pl't'ffs.

STATE OF MISSISSIPPI, *County of Bolivar, To wit:*

This day the above named O. G. McGuire Attorney, R. J. McGuire, E. H. Woods, W. S. Woods, M. Y. Scott, E. M. Scott, W. A. Verger and W. H. Fitzgerald made oath before me, a justice of the peace for said County, that the allegations of the above complaint

to his own knowledge and belief and to the knowledge and belief of the above plaintiffs are correct and true.

O. G. McGUIRE, *Att'y.*

Giver under my hand this 23rd day of October A. D. 1899.

S. A. HINDS, *J. P.*

Endorsed: E. H. Woods *et al.* Filed October 23rd 1899. S. A. Hinds J. P.

132 The State of Mississippi to the the Sheriff of Bolivar County:

Whereas R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, W. A. Yerger and W. H. Fitzgerald have made complaint, on oath before me, a Justice of the Peace for the said County, that J. W. Sharp unlawfully withholds from their possession of certain land to wit: Lots 1. 2. 3. 4. 5. 6. 7. & 8 Section 36, Township 21, Range 8 West, and Lots 1. 2. & 3. section 37, Township 21, Range 8 West lying and being in the said County, and hath prayed the possession thereof this is therefore to command you to summons the said J. W. Sharp to appear at the Court House at Rosedale, Mississippi on the 28th day of October A. D. 1899, before the Justices of the County, to answer to the complaint and also to require you to give notice of this warrant to two other justices of the peace of the County, and to request their attention at the time and place named, and have then there this warrant.

Witness my hand, this 23rd day of October, 1899.

S. A. HINDS, *J. P.*

Whereupon the following Endorsement Appears in words and figures to wit:

I hereby appoint H. B. Wilson Special Deputy Sheriff to serve the within on J. W. Sharp.

R. M. EDWARDS, *Sh'ff.*
L. E. EDWARDS, *D. S.*

Further executed personally on the within named Defendant J. W. Sharp by reading said writ to him and by handing the said J. W. Sharp a true copy of said writ.

This 23rd day of Oct., 1899.

R. M. EDWARDS, *Sh'ff,*
By H. B. WILSON,
Special Deputy Sheriff.

133 STATE OF MISSISSIPPI, *County of Bolivar:*

In the Unlawful Detainer Court Before S. A. Hinds, a Justice of the Peace for the County and State Aforesaid.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, W. A. YERGER and W. H. FITZGERALD, Plaintiffs,

vs.

J. W. SHARP, Defendant.

The Petition of the Above Named Defendant J. W. Sharp, for Removal to the Federal Court of the Above Styled Cause.

Petitioner, J. W. Sharp, defendant to the above styled cause, respectfully show- to the Court, and State- as follows, to wit:

That the above suit was begun against your petitioners as defendants on the 23rd day of October, 1899 before the said S. A. Hinds, Justice of the Peace, by an action of unlawful detainer for the possession of the following described tracts or parcels of land, alleged in the original petition in said suit to be in the County of Bolivar, and State of Mississippi, to wit:

Lots 1, 2, 3, 4, 5, 6, 7 & 8 in Section 36, Township 21, Range 8 West, and

Lots 1, 2 and 3 in Section 37, Township 21, Range 8 West. Petitioners say that the above described Lands are of great value, to wit, more than Five thousand Dollars ($5,000) and at the time said suit was begun, and, at the present time, your petitioners, the defendants to said unlawful detainer suit, were and are non-residents of the State of Mississippi but are *bona fide* residents of the State of Arkansas, the said J. W. Sharp being a resident of Landbeville in the State of Arkansas, being a *bona fide* citizens of the State of Arkansas.

That the matter in dispute in said suit, and for which said suit is brought, exceeds the sum of Five thousand Dollars ($5,000) exclusive of costs, and the said defendants Petitioners herein, herewith file their bond, with good and sufficient sureties, for their en-

134 tering into the Circuit Court of the United States for the Western Divisision of the Southern District of the State of Mississippi, wherein said suit is pending on the first day of the next session of said Court, a copy of the record in said suit, and also for his appearing in said Circuit Court to answer the said suit, and for paying all costs that may be awarded by the said Circuit Court — shall hold that said suit was wrongfully or improperly removed thereto, as provided by the Statutes of the United States.

Wherefore, The said defendants, the petitioners herein, pray this Honorable Court that said bond may be approved, and said suit be removed into the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, and that this Court proceed no further in the premises.

J. W. SHARP.

STATE OF MISSISSIPPI, *County of Bolivar:*

J. W. Sharp, being sworn, say that they are Defendants in the above entitled action, and have read the foregoing petition, subscribed by them, and know the contents thereof, and the same is true of their own knowledge.

Sworn to before me this 28th day of October, A. D. 1899.

W. A. STONE, *Clk.*

[SEAL.] W. A. SHELBY, *D. C.*

Endorsed: Filed Oct. 28th/99. S. A. Hinds, J. P.

Whereupon the following bond was filed in words and figures as follows to wit:

Know all men by these present, That we J. W. Sharp of Nedford, in the State of Arkansas, as principal and The Valley Bank and D. Reinach as sureties, are jointly and severally held and firmly bound unto R. J. McGuire, E. H. Woods, E. S. Woods, M. Y. Scott, M. M. Scott, E. M. Scott, W. A. Yerger and W. H. Fitzgerald, in
135 the penal sum of Five hundred Dollars (500.00), for which amount, well and truly to be paid, we bind ourselves firmly by these presents

The condition of this obligation is such that if the said J. W. Sharp defendants in a suit now pending before the Unlawful Detainer Court of Bolivar County, and State of Mississippi composed of S. A. Hinds, Justice of the Peace and two other Justices of the Peace of said County shall, on the first day of next session, or term of the Circuit Court of the United States for the Western Division of the Southern District of Mississippi, enter a copy of record in said suit, and shall enter the appearance of said J. W. Sharp in said Circuit Court of the United States, and shall enter special bail in the cause, if special bail should be originally required, and pay all costs that may be awarded against them by said Circuit Court, if said Circuit Court shall hold that said suit was unlawfully or improperly removed from the State Court, then this obligation to be void, otherwise to remain in full force and effect.

Witness our signatures this the 28th day of October, 1899.

J. W. SHARP.
VALLEY BANK,
By D. REINACH, *Prest.*
D. REINACH.

Approved this the 28th day of Oct. 1899.

S. A. HINDS, *J. P.*

Endorsed: Oct. 28th/99. S. A. Hinds, J. P.

STATE OF MISSISSIPPI,
County of Bolivar (in the First Judicial District).

I, C. T. Christmas, Clerk of the Circuit Court in and for said First Judicial District of said County, do hereby Certify that the foregoing

Five pages contain a true and correct transcript of the original papers, and of the proceedings had as the same appear on file and of record in a suit lately pending in one of the Justice's Court wherein S. A. Hinds was the Justice of the Peace and styled R. J. McGuire *et al. vs.* J. W. Sharp, the record of the above cause is now a
136 part of the records in my office.

In witness I have hereunto set my hand and seal this the 5th day of December, A. D. 1905.

C. T. CHRISTMAS,
Circuit Clerk.
JOHN L. GILL, *D. Clk.*

137 THE STATE OF MISSISSIPPI, *Bolivar County:*

I, A. McC. Kimbrough, Judge of the Circuit Court of said County, being the sole presiding Judge of the 4th Judicial District of the said State, which said District includes the said County of Bolivar, do certify that C. T. Christmas, whose name, signed by John L. Gill, Deputy Circuit Clerk, appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of said Court, duly elected and qualified, and that said John L. Gill is the duly appointed, qualified and acting Deputy Circuit Clerk of said County, and that said certificate and attestation are in due form of law, and by the proper officer, and that the seal thereto attached is the seal of said Circuit Court, and that said Court is a Court of Record.

Given under my hand, at Greenville, Mississippi, this 13th day of December, A. D. 1905.

A. McC. KIMBROUGH,
Judge 4th Judicial District of Mississippi.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned Clerk of the Circuit Court of the County of Bolivar, in said State, (said Court being a Court of record, and having an official seal), do hereby certify that A. McC. Kimbrough, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Judge of the 4th Circuit Court, or Judicial District, of said State, which said *District includes* said County of Bolivar, and that A. McC. Kimbrough, Judge as aforesaid, is now, and was at the date of said attestation duly commissioned, qualified and acting as such.

Given under my hand and seal of office, at Rosedale, Mississippi, this the 14th day of December, A. D., 1905.

C. T. CHRISTMAS, *Clerk,*
By JOHN L. GILL,
Deputy Clerk.

Endorsed: Filed Dec. 16th, 1905. W. P. Feild, Clerk.

138 And on December 18th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors, and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing hereof not being concluded on Saturday the same is now resumed; and the complainants by their said solicitors file herein their exceptions to testimony, and said complainants and defendants file herein their agreement as to jurisdiction, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

Which exceptions of the complainants to the testimony are as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

1304.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

Exceptions of Complainants to Testimony.

First: Complainants except to a letter dated April 29th, 1859 from W. G. Ford to Hon. William McWillie, as incompetent.

Second: Complainants also except to the letter of date January 8th, 1859, from A. Downing to W. G. Ford, as incompetent, particularly because it is a correspondence between private individuals, and not in any official character, not sworn to nor written in any official character or capacity.

And further because the introduction of it is not in accordance with agreement of counsel.

Third: Complainants also except to letter of date February 28th, 1855, from John Wilson, Commissioner to Jacob Thompson because incompetent and being written to a private citizen and also

139 because the same is not admissible under agreement of counsel.

(Signed) ROSE, HEMINGWAY AND ROSE,
MYERS AND BANKS,
Solicitors for Complainants.

Endorsed: Filed December 18th, 1905. W. P. Feild, Clerk.

Which Agreement as to Jurisdiction is as follows:

(This agreement was not written up. W. P. Feild, Clerk.) (See Folio 141 of this Record.)

140 And on December 19th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. McFERRIN, Partners, Doing Business under the Firm Name of Moore and McFerrin,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by A. Y. Scott and J. M. Moore, Esqs., their solicitors and the hearing hereof not being concluded on yesterday the same is now resumed, and the hearing hereof not being concluded the same is continued until tomorrow morning at half past nine o'clock.

And on December 20th, 1905, the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. McFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose, Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors, and the hearing hereof not being concluded on yesterday the same is now resumed; and the defendants by their said solicitors by leave of court file herein their waiver of jurisdiction herein, and the compl inants by their said solicitors by leave of court file herein their request for declarations of law; thereupon the Court proceeds to the hearing of this cause, and the Court having heard all the evidence and arguments of counsel, and not being now well and sufficiently advised in the premises takes time to consider of its own judgment

141 herein.

Which waiver of jurisdiction of the defendants is as follows:

In the United States Circuit Court for the Western Division of the Eastern District of Arkansas.

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

The defendants in open Court waive any question as to the jurisdiction of this Court sitting as a Court of Equity in the hearing of this cause.

(Signed) D. E. MYERS,
U. M. ROSE,
For Complainants.
A. Y. SCOTT,
J. M. MOORE,
For Defendants.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

Which request for declarations of law by the complainants is as follows:

1. The lands having been surveyed and patented as lying within the limits of the State of Arkansas, this fact raises a strong presumption that the survey and patent were legally and properly made and that they are therefore valid.

2. The boundary of the State of Mississippi does not extend beyond the high or low water mark, and does not include the lands in controversy.

3. If the said lands were at the time of the admission of Mississippi west of the middle of the main navigable channel of the Mississippi River they never formed any portion of the lands of the territory of the State of Mississippi.

4. If the line between Arkansas and Mississippi was east of the eastern boundary of Island 76 at the time of the admission of Mississippi into the Union, it was not changed when the main current afterwards shifted to the other side of the Island.

5. The evidence shows that the long acquiescence of the State of Mississippi in the boundary dividing its territory from that of Arkansas as shown by the official survey of the latter state, and the patent issued upon it, establish the fact that the plaintiffs have the better title to the lands in controversy.

142 6. The lands having been surveyed and patented as being within the State of Arkansas, the presumption arises, in the absence of other evidence, that from the time they were regularly assessed for taxation, *and that* all taxes legally falling due on them were collected as in other similar cases.

7. The tax sale under which the defendants claim is invalid be-

cause the lands are not described according to the surveys under which they were patented.

8. If the main navigable channel of the river was east of the island at the time of the admission of Arkansas into the Union, the said channel still continues to be the boundary between that State and the State of Mississippi.

9. That the fact that officers of the State of Mississippi may have asserted or suggested that Island 76 belonged to that State or that the patent to said lands was illegally issued, without any definite action on the part of the State to assert any claim to the Island in the Courts or some other proper tribunal, cannot prevent the application of the principle of acquiescence in the boundary as indicated by the official survey and patent. The Courts having been at all time open to the State of Mississippi. The failure of the State for the long period shown by the evidence to claim said land by direct and affirmative action constitutes such laches as deprives its claim of any validity.

10. The Land Officers of the United States for the Helena District had no authority to sell lands lying in Mississippi; and they did not, as far as shown, attempt to make any such illegal sale.

11. The tax sale under which the defendants claim is void because, (1) The officers of Bolivar County, Mississippi, had no authority to assess said land for taxation. (2) Because said lands did not lie within the limits of Bolivar County and (3) Because it had been previously adjudicated by a competent tribunal of the State of Mississippi that said lands formed a part of the territory of the State of Arkansas, which adjudication had never been reversed, modified or annulled, but remained in full force.

12. The tax sale under which the defendants claim is void because the lands are not described in the assessment, sale and
143 conveyance under which they claim in such manner as to show that they are the same lands described in the bill of complaint and said description is not made in conformity with law.

13. Even admitting that the lands in controversy have been within the boundaries of the State of Mississippi ever since the admission of that State into the Union down to the present time, then, and in that case, there is nothing to show that the State of Mississippi ever acquired any title to the lands from the United States; and the defendants can have no better claim than that of the State of Mississippi. If the lands in the meantime belonged to the United States they were not liable to taxation under the authority of that State, and the title under which defendants claim is void.

(Signed) D. E. MYERS AND
U. M. ROSE,
For Plaintiffs.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

And on January 10th, 1906 the following proceedings were had to-wit:

1304.

WILLIAM MOORE and J. S. MCFERRIN, Partners, Doing Business as Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, E. M. SCOTT, M. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come the complainants by Myers and Banks and Rose, Hemingway and Rose Esqs., their solicitors and come the defendants by J. M. Moore and A. Y. Scott, Esqs., their solicitors and this cause having been submitted at a previous day of this term and the Court being now well and sufficiently advised as to what decree to render herein, doth find that the land in controversy is situated in the State of Mississippi and is not within the jurisdiction of this Court.

It is accordingly ordered, adjudged and decreed that this cause be dismissed for want of jurisdiction. It is further ordered that the money in the Registry of the Court to the credit of this cause
144 be paid over to the defendants, but that execution of this part of the decree be stayed for sixty days.

(Signed) JACOB TRIEBER, *Judge.*

And on January 11th, 1906 the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

On this day is presented and filed the certificate of Honorable Jacob Trieber, United States District Judge for the Eastern District of Arkansas, as to jurisdiction of this cause.

Which certificate is as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Ark.

MOORE and MCFERRIN

vs.

R. J. MCGUIRE ET AL.

I, Jacob Trieber, United States District Judge for the Eastern District of Arkansas, do hereby certify that at the hearing of the above entitled cause I was the sole presiding Judge, none of the other Judges authorized by law to preside over said Court being present; and I further certify that the sole question upon which said cause was finally determined and by the Court dismissed was that the Court was without jurisdiction for the reason that the lands in

controversy are lying in the State of Mississippi, and no other question than that of jurisdiction was passed upon or determined by the Court.

Witness my hand as Judge as aforesaid this 11th day of January, 1906.

(Signed) JACOB TRIEBER,
U. S. District Judge.

Endorsed: Filed January 11th, 1906. W. P. Feild, Clerk.

145 The following opinion of the Court was delivered in the case.

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

MOORE & MCFERRIN
vs.
R. J. MCGUIRE ET AL.

The complainants seek by this bill to quiet their title to a tract of land constituting an island in the Mississippi River, now known as Island No. 76.

The material allegations in the original bill and amendment thereto are that the complainants, citizens of the State of Illinois, are the owners and in possession of the lands in controversy, which are situated in the County of Desha and State of Arkansas. They derain their title to all of the lands except 51 acres as follows:

Certificates of purchase and patents from the United States government, issued in July, 1847, and at various times thereafter during the same year, showing purchases and entries at the United States Land Office in Helena, Arkansas, the lands being described as being in fractional Sections 35 and 36, Township 11 South of the Base Line, Range 1 East of the Fifth Principal Meridian, and fractional Sections 1 and 2, in Township 15 South of the Base Line, Range 1 East of the Fifth Principal Meridian. That afterwards said lands having been duly assessed by the proper officers of the State of Arkansas for taxes were forfeited to the State for the non-payment thereof. While thus held by the State, it instituted an action in equity on the chancery side of the Circuit Court of Desha County, State of Arkansas, under the provisions of the statutes of that
146 State then in force, to determine whether the forfeiture of those lands to the State of Arkansas was valid, and if not, to ascertain the taxes due thereon to the State and County, declare them a lien upon said lands, and if not paid by a time to be designated by the court, that they be sold for the taxes thus found by the court to be due and declared a lien thereon. That on October 11, 1883, a decree was rendered by said court setting aside the forfeitures to the State, finding the amount of taxes due on the lands and declaring them to be a lien, and if not paid within the time designated by the decree, that they be sold by the special commissioner appointed by the court for that purpose. The moneys decreed

to be due and declared to be a lien on the lands not having been paid, they were sold in conformity with the orders of the court, by the special commissioner appointed for that purpose, and purchased by Sallie H. Murphy, to whom, after confirmation of the sale by the court and the expiration of the time within which the owners had, under the law, the right to redeem, a proper deed of conveyance was executed; and complainants now claim title by conveyance from the said Sallie H. Mur*hpy*, made on August 22, 1898, and ever since which time they allege they have been in possession thereof.

As to the remaining 51 acres of the island not included in the sales made by the United States when the other lands were sold in 1847, complainants derain their title as follows:

A patent from the United States to the State of Arkansas under the Swamp Land Grant of 1850, which patent was executed in 1858, the lands having been selected by the State of Arkansas as
147 swamp and overflowed lands; subsequent conveyances by the State of Arkansas to John Evans, under whom complainants claim title by *mesne* conveyances fully set out in the bill.

It is then charged that the island is in the Mississippi River, lying in front of portions of Bolivar County, State of Mississippi, and Desha County, State of Arkansas; that ever since the sales made by the government and the conveyance by the State of Arkansas, the lands were assessed and subjected to State and County taxes in Desha County, Arkansas.

It is further charged that by the Act of Congress of 1817, admitting the State of Mississippi into the Union, the western boundary of that State was fixed on the eastern bank of the Mississippi River, which has never been changed by any act of Congress, and that the said east bank of the Mississippi River is still the western boundary of that State; that in 1836 the legislature of that State, in establishing the County of Bolivar, fixed the boundary line on the west as "to the Mississippi River; thence up the Mississippi River."

It is also charged that at the time of the admission of the State of Arkansas into the Union in 1836, and at the date of the survey of the public lands in said State by the Surveyor General of the United States for said State the main channel of the Mississippi River was east of this island, and therefore the island became a part of the territory of said State, although since then the main channel of the River has changed, first to one side and then to the other.

That notwithstanding these facts, the complainants learned in 1899 that the State of Mississippi claimed ownership of these
148 lands by reason of forfeitures for non-payment of the state and county taxes assessed and levied by the authorities of Bolivar County, Mississippi, and that under such claim the State sold them to the defendants, citizens of Mississippi, who now claim title thereto. That neither the State of Mississippi nor the County of Bolivar made any claim that said island was in that State until in 1882 after changes had been made in the main channel of the Mississippi River. That in 1892 the State of Mississippi sold the island, which it claimed to own by reason of a forfeiture for the non-payment of taxes, to Curry & Hall, but that in 1893 or 1894, upon the applica-

tion of said Curry & Hall to the Auditor of State, a board authorized by the laws of the State of Mississippi to determine those questions, decided that those lands were situated in the State of Arkansas and not subject to taxation in the State of Mississippi, and for this reason caused the money paid by Curry & Hall to the State for the purchase of those lands to be refunded to them out of the State treasury, which was done. That notwithstanding these facts, defendants, during the temporary absence of complainants from the island, attempted to take possession of these lands by threats of intimidation.

The bill then proceeds to narrate various acts of the parties interfering with complainants' rightful possession, and prays for process, for an injunction against the defendants and to quiet their titles.

The defendants pleaded to the jurisdiction of the court, upon the ground that the lands are not situated in the State of Arkansas, but in the State of Mississippi. They also deny most of the material allegations in the bill, but, as upon the argument it appeared
149 that the only question necessary for a proper determination of the controversy is in what state the lands are lying, it is unnecessary, in this statement of facts, to refer to any parts of the answer other than those material to the plea to the jurisdiction of the court.

The plea or answer denies that the legal effect of the Act of Congress admitting the State of Mississippi into the Union fixes the eastern bank of the Mississippi River as the western boundary of the State, but charges that by that act the middle of the main channel of the Mississippi River was fixed as such boundary, and that the State of Mississippi has been in possession of all the island ever since, exercising jurisdiction over the same. They deny that at the time the surveys for Arkansas were made the main channel of the River was east of the island, but charged that at that time, and long prior thereto, and at the time of the admission of Mississippi into the Union, the main channel of the River was west of the island. They also deny that any officials of that State, authorized by law to act for the State, ever abandoned the State's claim of jurisdiction or conceded it to the State of Arkansas, and if they did do so, they acted without authority and in violation of the Constitution of the State of Mississippi, and their acts, therefore, were void and not binding upon the State.

E. D. Meyers, Rose, Hemingway & Rose, for Complainants.

A. Y. Scott and John M. Moore, for Defendants.

TRIEBER, *District Judge:*

I.

Where is the western boundary line of the State of Missis-
150 sippi, under the Act of Congress admitting the State into the Union?

The language of the Act of Congress admitting that State into the Union, approved March 1, 1817, describes the western boundary of the State as follows:

"Beginning on the River Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east * * * thence south * * * thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning:"

On the part of the complainants it is insisted that this Act fixes the boundary line at the Mississippi River, and not in the middle of the main channel of the River. In grants of land, the well settled rule is that:

"All the grantor's title will pass by the conveyance which describes the line along the river as running 'with' or 'along' the stream, or as running 'by' or 'on' or 'upon' the stream, or 'up' or 'down' the stream." 3 Farnham on Waters and Water Rights, Section 853, and numerous authorities cited there; Gould on Waters, Sec. 195.

In St. Louis *vs.* Rutz, 138 U. S. 226, the description was:

"To the present bank of the Mississippi River; thence along the extended line * * * to low water mark of the Mississippi River; and thence down to the extended line between surveys 156 and 157."

The contention was that the deed did not convey to the grantees the fee of the bend of the River beyond low water mark (in Illinois the riparian owners owning the bed of the river); but the court held that all the right, title and interest of the grantor, including the bed of the river to the middle of the main channel, passed by the conveyance.

See also on that point Vattel on the Law of Nations, par. 120; Handley *vs.* Anthony, 5 Wheat. 374; Indiana *vs.* Kentucky, 136 U. S. 479.

But from an examination of the treaties, cessions and acts
151 of Congress on that subject, there can be little doubt what the intentions of Congress were. The treaty between France Spain and England, concluded in February, 1763, stipulated that the middle of the Mississippi River should be the boundary between the British and the French territories on the continent of North America. This line has never been changed. It was recognized by the treaty of peace with Great Britian in 1783, and by different treaties since then, the last of which resulted in the acquisition of the territory of Louisiana (embracing the country west of the Mississippi River) by the United States in 1803.

The boundaries of the State of Missouri, when she was admitted into the Union as a state in 1820, were fixed on this basis, as were those of Arkansas in 1836. Missouri *vs.* Kentucky, 11 Wall. 395, 401.

At the time of the treaty between France, Spain and England in 1763, the colony of Georgia owned all of that territory, and consequently, by virtue of that treaty, to the middle of the main channel of the Mississippi River, the part west of the middle of the River belonging to France By the act of cession of the State of Georgia, April 24, 1802, that State ceded to the United States:

"All the right, title and interest which the said State has to the jurisdiction and soil of the land situated within the boundaries of the

United States south of the State of Tennessee and west of a line beginning on the western bank of the Chattahoochee River where the same crosses the boundary line between the United States and Spain."

The act of cession of Georgia then further provides:

"Fifthly. That the territory thus ceded shall form a state and be admitted as such into the Union as soon as it shall contain sixty thousand free inhabitants, or at an earlier period, if Congress shall think it expedient, on the same conditions and restrictions, with the same privileges," etc.

152 Sub-section 2 provides:

"The United States accept the cession above mentioned and on the conditions therein expressed," etc.

When in 1817 the State of Mississippi was admitted into the Union, Congress, in pursuance of the obligations assumed by the articles of cession and agreement of the State of Georgia before mentioned, could do nothing less than to cede to the State formed from this territory all the territory ceded by Georgia for that purpose.

When the territory of Arkansas was formed, its boundaries were: "All that part of the Missouri territory which lies south of a line beginning on the Mississippi River," etc. Act March 2, 1817; 3 Statutes, 493.

The territory of Missouri at that time constituted the northern part of the territory of Louisiana acquired by the treaty of 1803 with France, and included all that part of the Mississippi River west of the middle of the main channel, as defined by the treaty between France, Spain and England in 1763.

When in 1836 the State of Arkansas was admitted into the Union, its eastern boundary was fixed in the middle of the River.

If complainants' contention is to be sustained, the court must not only hold that Congress violated the trust it assumed by the articles of cession and agreement made with the State of Georgia in relation to this territory, but that it left the east half of the Mississippi River along the entire State of Mississippi without being incorporated in any State. This would hardly be a reasonable construction of the acts of Congress.

In the opinion of the court, the western boundary line of the State of Mississippi is the middle of the main channel of the
153 Mississippi River.

II.

Where was the main channel of the River at the time of the admission of Mississippi into the Union?

The well settled rule is that the boundaries of a state must be determined by what they were at the time of its admission, unaffected by the action of the forces of nature upon the course of the river. Missouri *vs.* Kentucky, 11 Wall. 395, 401; Indiana *vs.* Kentucky, 136 U. S. 479, 508.

The middle of the main channel of the Mississippi River being the boundary line between the States of Mississippi and Arkansas, the important question to be determined is where it was in 1817, when Mississippi was admitted into the Union and its boundaries

determined, not only by the Act of admission, but also by the act of cession of the State of Georgia, which, as shown hereinbefore, the national government accepted in trust for the purpose of creating a new state.

The "main channel," as defined by the Supreme Court of the United States, is the "main navigable channel, and not the thread of the stream or the middle of the bed of the stream." Iowa *vs.* Illinois, 147 U. S. 1.

In so far as it is sought to establish the fact where the main channel of the River was at that time, by oral evidence, it is very unsatisfactory, except that the evidence conclusively establishes the fact that ever since 1839, and probably two or three years before that time, up to the year 1881, the main channel was east of the island in controversy, and since 1881 up to the present time west
154 of the island. As to what it was prior to 1839, the testimony of some old river pilots is that as early as 1839 they had been advised that it had always been east of the island. On the other hand, in a letter written by Major Downing, at one time United States Surveyor of Public Lands in the State of Mississippi, to the Governor of Mississippi, in relation to that matter, he states that in 1835 he travelled a great deal on the River at that point, and that at that time the channel was where it is now, west of the island.

This testimony is so unsatisfactory and conflicting that it is hard to determine from it alone where the channel really was. Captain Miller, the pilot who was seventy-nine years old at the time his deposition was taken, might easily have been mistaken as to what his father really told him. He testified that his father had navigated the River as a bargeman since 1812, and when in 1839, he being then a boy seventeen years old, he made his first trip as a pilot with his father and brother, he was told that the channel had always been east of the island. It is easily conceivable that his father having told him that this was the channel, and being aware of the fact that his father had navigated the River ever since 1812, he concluded that his father meant that the channel had been east of the island ever since he had navigated the River. Major Downing's letter, written in 1859, is at best but slight evidence, as he was not an experienced river man, and the letter was but an *ex parte* statement made in an effort to secure the lands of the island for the State of Mississippi under the Swamp Land Grant of 1850.

Mr. Justice Davis, who delivered the opinion of the court
155 in Missouri *vs.* Kentucky, *supra*, in speaking of the testimony of men who navigated the river in the early days engaged in the business of flat-boating, which, he says, "is hardly ever undertaken in a low stage of water," says:

"There is nothing to show that any of them ever made a personal examination of the channels and surrounding objects at this point, and there is a remarkable absence of facts to sustain their opinions. It is also noticeable, in connection with this evidence, that none of the witnesses (Hunter may be an exception) ever lived in the vicinity of the island, or remained there any length of time, and that all the knowledge any of them acquired of the state of the river was

obtained by passing up or down it at different times, either on flatboats or steamboats. Notwithstanding they swear positively that the channel was always east of the island, yet Watson says it changed for about three years, and Ramney testifies that on one occasion, when the main channel was divided into three parts, the deepest water for a short time in the fall of the year was found on the west of the island, and steamboats passed on that side. * * * And passing the river only occasionally, and without any knowledge of where the volume of water flowed when the river was low, they would naturally conclude it was the main channel." 11 Wall. 403, 404.

This remark applies with great force to the testimony in this case.

Be this as it may, we are not confined to this testimony, as the maps and surveys and other acts of officials, made in those early days, enable the court to determine where the channel was prior to the admission of the State of Arkansas into the Union in 1836, and very near the time of the admission of Mississippi as a state in 1817.

The main channel of a river having been once established by proper proof, the presumption, in the absence of evidence to the contrary, will be that it was there before that time and remained there since. Thus, it being established conclusively, as found by the court, that the main channel of the river was east of this island in 1839, the presumption, in the absence of proof to the con-
156 trary, is that it was there before that time, even as early as 1802, when the State of Georgia ceded the territory to the government for the purpose of creating the State of Mississippi.

The first survey and map of the river in the vicinity of this island, so far as the evidence in this case shows, was made in 1821, under direction of the War Department of the United States. The endorsements on this map are: "Reconnoissance of the Mississippi and Ohio Rivers 1821. This reconnoissance of the Mississippi and Ohio rivers was made during the months of October, November and December, 1821, by Captain H. Young and Captain W. T. Poussin, of the Topographical Engineers, and Lieutenant S. Tuttle, of the Engineers, under the direction of the Board of Engineers. Soundings on the bars were made during the months of October and November and it is believed that they are accurate for the lowest stage of waters in common years. In very dry seasons, the lowest stage of waters would be about ten inches lower." The map also shows a "table of conventional signs used throughout this reconnoissance of the Mississippi and Ohio rivers," to explain the marks and different colors on the map. The copy introduced in evidence is certified by the Secretary of War to be "true copies of the originals on file in the office of the Chief Engineer, U. S. Army."

This map pretends to show the different islands, whether with growth of heavy timber or with willows, and subject to annual inundations. It also indicates dry sand bars, lines of shallow water, and the lines of the channel of the river. The scale of lengths is one inch to a mile, and for breadths two inches to a mile.
157 On this map the island in controversy is called "Chapeau Island." The coloring on this island indicates that it has a

growth of heavy timber on it; that to the east of it is a sand bar covering about one-third of the space between the island and the Mississippi main shore; and that for some further distance to the east (the Mississippi shore) there is shallow water, leaving but a narrow body of water between the main shore and the shallow water; and it also indicates that the channel of the river is to the west of the island.

The map next in date to that is the sectionalized survey, certified on January 22, 1829, by W. M. McRee, who signs it as Surveyor of Public Lands in Illinois, Missouri and Arkansas, which gives the survey of fractional Townships 11 and 12, Range 1 east of the Fifth Principal Meridian, in the State of Arkansas, conformable to the field notes of the surveys thereof on file in this office. This plat shows a survey of the lands on the main shore of the State of Arkansas opposite this island, but no survey of the island itself. It further shows a survey of the width of the river by triangulation. The surveys of the river made above and below the island in controversy extended to the main shore of the State of Mississippi, but where the island is, the survey was made only to the west bank of the island. There is a sketch of the island on the map, but no indication that it was surveyed or that it pretended to be anything near an accurate outline of the island. The surveys and field notes from which this map was made are certified on the map to have been made in February, 1827, by Daniel Miller.

The plat next in date introduced in evidence is that of a survey of Township 21, Range 8 West, Choctaw District, State of
158 Mississippi, made by Benjamin Griffin, a deputy surveyor, in January and February, 1830, and approved by Jos. Dunbar, Surveyor of Public Lands south of Tennessee. This plat bears the following endorsement: "Surveying the boundary lines, all section lines, connections to the front sections, traverse of both sides of Bolivar Lake, traverse of the Mississippi, charged by B. Griffin, Volume 3 1832. Also traverse and re-traverse of Island 76." This plat also shows only a survey of the lands on the main shore, but not of the island, although the endorsement "also traverse and re-traverse of Island 76" would indicate some kind of a survey of that island. A sketch of the island appears on this map, but nothing to indicate a survey or that it is more than a mere eye sketch.

The plat next in date introduced in evidence is another map of Township 21, Range 8 West, Choctaw District, and the field notes of the surveyors from which the map was made. This map shows the same survey of Township 21, Range 8 West, as the map last mentioned, and in addition thereto a complete survey of Island 76 and sectionalizing of the lands thereon, which are described on this map as fractional Sections 36 and 37 of Township 21, Range 8 West, Choctaw District, and containing the following endorsements: "The whole of this Township was surveyed by Benjamin Griffin, deputy surveyor, in January and February, 1830. Surveyor's office, Washington, Mississippi, May 31, 1830. Examined and approved. Jos. Dunbar, Surveyor south of Tennessee." The copy of this map introduced in evidence is certified to by the State Land Commissioner

of the State of Mississippi, who certifies, "That he has in his official keeping the records of the Surveyor General's office, and that
159 the map is a true and faithful tracing and copy of and from the original now on file and in his official keeping." In the deposition of Mr. Nall, the Commissioner of State Lands for the State of Mississippi, he explains that all the records of the Surveyor General's office for the State of Mississippi were turned over to the State of Mississippi and are kept in his office. A copy of this map was filed with the Department in Washington in October 1836 as shown by a letter of Hon. Thos. A. Hendricks the Commissioner of the General Land Office in 1859. The certified copies of the original field notes of Township 21, Range 8 West, filed on April 9, 1830, do not show that the island was included in the survey of that Township, but a certified copy of additional field notes filed in the Surveyor General's office for Mississippi on October 30, 1830, show a complete survey of Island 76, beginning at the upper end, made by Benjamin Griffin, the same deputy surveyor who surveyed that township on the main shore. On these field notes, which are stated in black ink to be those of Township 22, Range 8 West, Choctaw District, the following endorsements are in red ink: "Island 76 is in Township 21, Range 8 West, and not in Township 22, Range 8 West, and that, instead of section- 6 and 7, they should be sections 36 and 37, Township 21, Range 8 West." In another place, where the notes in black ink are "Beginning at the upper end of Section 6 (Island 76)," the words "36 in Island 76" are written in red ink above. In another place on these field notes there is written in red ink: "Section 6 should be Section 36, Township 21, Range 8 West;" and where the survey of Section 7 begins, there is an interlineation in red ink, "Section 7 should be Section 37, Township 21 *21*, Range 8 West." Another endorsement on these field notes is: "Distance across the shoot of Island 76, from the beginning of the last station north 40 east 2920 in-
160 tersecting the opposite traverse, 26 chains on the first station," indicating that the beginning of the survey of Island 76 at the upper end of it was, by actual measurement from the last station surveyed in Township 22, Range 8 West, on the main shore of the Mississippi River, 26 chains. By the depositions it is also proven that when Benjamin Griffin made the survey of this island and prepared his field notes, he intended to survey it as a part of Township 22, but when he made the plats he found that the island was too far south to be in Township 22 but should properly be in Township 21, and for this reason made them as Sections 36 and 37, all other sections being included in the original survey of Township 21.

In 1846 when the undisputed evidence shows that the channel had for several years changed to the east of the island another survey of the island was made by the Surveyor General of the Public Lands in Arkansas, and the lands section*al*ized as fractional Sections 35 and 36, Township 11 South, Range 1 East of the Fifth Principal Meridian, and fractional Sections 1 and 2 of Township 12 South, Range 1 East of the Fifth Principal Meridian. This plat contains the following endorsements: "Surveyor's office, Little Rock, Arkansas, 23rd December, 1846. The above plat of fractional Sections 35 and 36 in

Township 11 South of the Base Line, Range 1 East of the Fifth Principal Meridian, and of fractional Sections 1 and 2, Township 12 South of the Base Line, Range 1 East of the Fifth Principal Meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved. The subdivisional lines meanderings of Townships 11 and 12 South, Range 1 East, and south boundary of fractional Sections 35 and 36, Township 11 South, Range 1 East, amounting to 7 miles 39.11 chains, were surveyed in February, 1846, by John W. Garretson, D. S.,
161 under contract of 24 September, 1845, and were paid for by the Treasurer of the United States upon the account rendered and accepted by John W. Garretson, D. S., and certified from this office as Voucher No. 1, Fourth Quarter, 1846. (Signed) William Pelham, Surveyor of Public Lands in Arkansas." The copy introduced in evidence is certified by the Department of the Interior to be a true copy of the township plat of the survey to which it purports to relate now on file in that office.

It will be noticed that the surveys made by the Surveyor of Public Lands in the State of Mississippi describe the lands according to the Choctaw Meridian established for public lands east of the Mississippi River, while the Surveyor in the State of Arkansas describes them as south of the Base Line and east of the Fifth Principal Meridian, the lines established by the national government for surveys of public lands west of the Mississippi River. No doubt this contributed somewhat to the confusion of the officers of the Land Department, as will be shown hereafter.

In 1847, after the filing of the Pelham survey, these lands were placed by the national government on the lists of public lands subject to sale with the Register of the United States Land Office at Helena, Arkansas, under the description of the Pelham survey, but there is nothing to indicate that they were ever placed on sale in any of the United States land offices for the sale of the public lands in the State of Mississippi.

In 1847 all of these lands except 51 acres were sold by the National Government to various parties and patents issued to them, describing the lands as lying in Township- 11 and 12 South, Range 1 East of the Fifth Principal Meridian "in the district of lands sub-
162 ject to sale in Arkansas," but not describing the county or state in which they were situated.

The 51 acres not sold by the government were, in 1859, patented to the State of Arkansas under the Swamp Land Act of September 28, 1850. The lands on the island were selected by the State of Mississippi under the Swamp Land Grant Act of 1850 on June 12, 1852, and approved as such on September 24, 1854. In 1854, before any patents to the lands had been issued by the national government, the State of Mississippi sold these lands to W. G. Ford, but as the lands had been sold by the government, through the Arkansas Land Office, in 1847, no patent therefor was ever issued to the State of Mississippi, the Act of 1850 granting to the states only the unsold lands.

The field notes of the Mississippi survey made in 1830, and the

testimony of witnesses also establish the fact that the island was highest on the west side; that some timber had been cut on the same part of the island, and the small clearing was on that part of the island. This is of some importance, as it is well known that the lands bordering on the Mississippi River are always highest next to the main channel, and slope downward away from the river. This is owing to the fact that the annual overflows of the river leave most of the sediment on the bank nearest the main channel; as the timber cut in those days was used almost exclusively to supply steamboats with fuel, it was naturally cut near the channel which the steamboats used in navigating the river, and clearings were made nearest to the boat landings in order to enable the parties easy access to the boats, which at that time were the only means of conveyance for freight and passengers.

163 Taking these facts into consideration, and the facts that the map made in 1821 under direction of the War Department, the survey by Miller of the public lands in Arkansas in 1827, and the plat made from this survey by McRee in 1829, and the plat from the survey made in 1830 by Griffin, deputy surveyor of public lands in the State of Mississippi, and approved by Dunbar, Surveyor General for that State, treat the island as being in the State of Mississippi and the further fact that, as shown by that latter map, the bed of the river between the island and the main shore of the State of Mississippi was at that time in some places so narrow as to make it impossible for the immense volume of water running in the Mississippi River at that place to pass, the finding of the court is that in 1836, as well as in 1817 and long before that time, Island 76 was east of the middle of the main channel of the Mississippi River, and for this reason a part of the State of Mississippi and not within the boundaries of the State of Arkansas as defined by the Act of admission of that State.

III.

Has there been such an assumption of sovereignty by the State of Arkansas, and acquiescence by the State of Mississippi, as to change the sovereignty over the island from the State of Mississippi to the State of Arkansas?

In determining this question, we must not overlook the well established distinctions between ownership of lands and the exercise of sovereignty by sovereign states; at the same time, although the states of this Union are sovereign and possess all the powers of sovereign states except those powers which, by the Constitution,

164 are granted to the general government, the rules of international law governing independent nations cannot be applied to the full extent in relation to these subjects of prescription and acquiescence. There is no written law to settle disputes of that kind between independent nations, nor is there any tribunal whose jurisdiction can be invoked by one of the parties without the consent of the other and whose judgment will be conclusive on both parties. Nor must the fact be overlooked that, while the boundaries of the dif-

ferent States of the Union are well defined, especially of those admitted since the adoption of the national Constitution, by acts of Congress admitting them, a great deal of the territory claimed by other nations depends solely upon discovery or the right of possession. Disputes of that nature between independent nations can only be settled by treaty or conventions to submit to arbitration or resort to the sword, while, on the other hand, our Constitution provides for a tribunal to settle these matters, whose jurisdiction can be invoked by either of the parties to the dispute regardless of the wishes of the other party, and whose judgment is conclusive on all parties.

It has never been authoritatively determined by the courts of the United States whether a state can lose its territory by prescription and acquiescence. In 26 Am. & Eng. Enc. Law (2nd Ed.), 469, the author says:

"The period of time which in equity constitutes a bar is held not to apply to the case of a disputed boundary between two states, especially where the boundary is in a wild and unsettled country; but it seems that long possession under a claim of title will be protected, especially where there is not clear proof of mistake."

165 In Belding *vs.* Hebard, 103 Fed. 532, 43 C. C. A. 296, the head note is:

"It having been found as a fact from sufficient evidence furnished by the confirmatory acts of the two states (Referring to the states of North Carolina and Tennessee), based on the report of the joint commission, and by the natural objects therein designated, that the state boundary was actually run and established along Hangover ridge, that boundary could not be changed by the action of the state authorities in recognition of the other line claimed, unless such recognition has been so long and continuous on the part of both states as to create a mutual estoppel, and constitute an adoption of such line as the true and established boundary. It is not sufficient to create such estoppel or constitute such adoption that the surveyor general of Tennessee, in 1836, stopped the survey of lands adjacent to the boundary ceded by the Indians at the marked line of trees on Slick Rock creek, and that for that reason, and because of such marked trees, such line was generally reputed to be the boundary until 1882; it appearing that no grants of any of the lands in the disputed territory were made by North Carolina prior to 1853, and no settlers entered it until 1860, and very few thereafter, all of whom were squatters without title, who have claimed citizenship in one or the other state, as best served the interests of their landlords; and that since 1862 grants have also been made by Tennessee, and opinion as to the true boundary has been divided."

In Rhode Island *vs.* Massachusetts, 4 How. 591, the question of boundary between two states was involved, but in that case the court found that the original charters were somewhat ambiguous; that over 200 years had elapsed since the charter of Massachusetts was issued, and over 180 years since the Rhode Island charter; that in 1702 commissioners were appointed by the colonies of Massachusetts and Connecticut to settle the boundaries between them, which was accordingly done; that in 1710 Massachusetts and Rhode Island

appointed commissioners to determine this line, and it was determined by them at that date; that in 1718 commissioners appointed by those states in 1716 and 1717 again determined the boundary line, which was accepted by the general assemblies of both states; and that since that time Massachusetts has always
166 claimed and exercised jurisdiction over the land up to the line designated. While some protests were made by Rhode Island from time to time, nothing definite was done by her to offset the decisions of these commissioners. Upon these facts the court held that no mistake was clearly established but even if it had been established, that the court would not disturb these settlements.

In Missouri *vs.* Kentucky, 11 Wall. 395, the same question came before the court. In that case the court found the facts to be that Kentucky, ever since it was a state and up to the time of the institution of the suit by Missouri, exercised jurisdiction over the island in controversy; that it was embraced within her surveys made in 1837; that the people residing thereon paid their taxes to Kentucky and voted in that state, and at one time one of its residents was elected as a member of the general assembly of the State of Kentucky. On the other hand, Missouri never attempted to subject the inhabitants of the island to her laws or to exercise any jurisdiction therein.

The court also found, from certain physical facts connected with the island, somewhat similar to those established in this case, that it must have been at one time a part of the main shore of Kentucky and at some remote period separated by the formation of the east channel.

Upon these facts the court held that the island was a part of the State of Kentucky. The exercise of jurisdiction by Kentucky was not held by the court as being conclusive, but was a strong circumstance when considered in connection with the other facts established by the proof.

In Indiana *vs.* Kentucky, 136 U. S. 479, the State of Indiana waited for over seventy years after her admission as a state
167 before she instituted the action, and during all of that period the court found:

"It was over seventy years after Indiana became a State before this suit was commenced, and during all this period she never asserted any claim by legal proceedings to the tract in question. She states in her bill that all the time since her admission Kentucky has claimed the Green River Island to be within her limits and has asserted and exercised jurisdiction over it, and thus excluded Indiana therefrom, in defiance of her authority and contrary to her rights. Why then did she delay to assert by proper proceedings her claim to the premises? On the day she became a State her right to Green River Island, if she ever had any, was as perfect and complete as it ever could be. On that day, according to the allegations of her bill of complaint, Kentucky was claiming and exercising, and has done so ever since, the rights of sovereignty both as to soil and jurisdiction over the land. On that day, and for many years afterwards, as justly and forcibly observed by counsel, there were perhaps scores

of living witnesses whose testimony could have settled, to the exclusion of a reasonable doubt, the pivotal fact upon which the rights of the two States now hinge and yet she waited for over seventy years before asserting any claim whatever to the island, and during all those years she never exercised or attempted to exercise a single right of sovereignty or ownership over its soil. It is not shown, as he adds, that an officer of hers executed any process civil or criminal, within it, or that a citizen residing upon it was a voter at her polls, or a juror in her courts, or that a deed to any of its lands is to be found on her records, or that any taxes were collected from residents upon it for her revenues."

The court thereupon held:

"This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority."

At the end of the opinion, on page 518, the court said:

"We have not deemed it important to take up the testimony of each of the numerous witnesses produced in the case by the States of Indiana and Kentucky. It would serve no useful purpose
168 to attempt an analysis of the testimony of each, and to show how little and how much weight should be attributed to it. All the testimony is to be taken with many allowances from imperfect recollection, from the confusion by many witnesses of what they saw with what they heard, or of what they knew of their own knowledge with what they learned from the narrative of others. The clear and admitted facts we have mentioned, corroborated as they are by nearly everything of record presented, leave on our minds a much more satisfactory conclusion than anything derived from the oral testimony before us. The long acquiescence of Indiana in the claim of Kentucky, the rights of property of private parties which have grown up under grants from that State, the general understanding of the people of both States in the neighborhood, forbid at this day, after a lapse of nearly a hundred years since the admission of Kentucky into the Union, any disturbance of that State in her possession of the island and jurisdiction over it."

In Virginia *vs.* Tennessee, 148 U. S. 503, the boundary line between those States had been fixed in 1802 by *by* commissioners appointed by the two States and approved by them. Ninety years later Virginia instituted her suit to establish the boundaries according to the original charters granted by the English sovereign which it was alleged entitled her to a part of the territory claimed by Tennessee. The court in that case, speaking on the subject of acquiescence, say:

"Independently of any effect due to the compact as such, a boundary line between States or provinces, as between private persons, which has been run out, located and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the course given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary." 148 U. S. 522.

Further on in the opinion, in speaking of the fact that in two districts of small dimensions the residents have always voted as citizens of Virginia and have recognized themselves as citizens of that State, the court say:

"That fact, however, cannot affect the potency and conclusiveness of the compact between the States by which the line was established in 1803. The small number of citizens whose expectations
169 will be disappointed by being included in Tennessee are secured in all their rights of property by provisions of the compact passed especially for the protection of their cialms." 148 U. S. 527.

From these authorities, the conclusion reached by the court is that a State may lose its sovereignty and jurisdiction over its territory by prescription and acquiescence whenever these facts are clearly established.

The authorities do not agree as to the length of time for which such acquiescence must continue before there will be a loss of jurisdiction. Some eminent writers on international law have suggested a period of fifty years, but I am of the opinion that the safest rule to accept would be that of the common law that in order to acquire title by prescription the exercise of ownership must have been for such length of time that "the memory of man runneth not to the contrary."

Do the facts in this case show such acquiescence on the part of the State of Mississippi, and are the acts of the State of Arkansas relative to this island such, and have they been for such length of time, as will estop the State of Mississippi from now claiming its own?

In De Bussche *vs.* Alt, 8 Ch. Div. 286, 47 L. J. Ch. 381, 38 L. T. 370, Lord Justice Thesiger defines acquiescence as follows:

"If a person having a right and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This, as Lord Cottonham, in Leeds *vs.* Amherst, 2 Ph. 117, 16 L. J. Ch. Div. 5, 10 Jur. 956, said, is the proper sense of the term acquiescence, and in that sense it may be defined as quiescence under such circumstances as that assent will be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct."

170 In Scott *vs.* Jackson, 89 Cal. 262, the court defined acquiescence to be:

"Where a person who knows that he is entitled to impeach a transaction or enforce a right neglects to do so for such a length of time that, under the circumstances of the case, the other party may fairly infer that he has waived or abandoned his right.

From the proofs adduced the following facts appear: That until shortly before the institution by defendants of the suits in the courts of the State of Mississippi for unlawful detainer and the commencement of this action, the island was not inhabited except when timber was cut and a small clearing was made; that whenever possession was had it was desultory, and there is not any evidence to justify a finding that there was a permanent possession by any one claiming title, or that those who went on the island were citizens of Arkansas or Mississippi; that immediately after the issuance of the patents by the United States the proper authorities of the State of Arkansas placed the lands on the tax books and assessed them as lands lying in that State, and continued to do so ever since, although the tax books prior to 1865 for the County of Desha, in which said lands were assessed, were destroyed during the war and there is no positive evidence to show such assessments prior to 1865. In view of the fact that the laws of the State of Arkansas require all lands, when sold by the national government, to be placed on the tax books and assessed for taxation, the presumption is that the officers obeyed and executed the law. On the other hand, it appears that immediately after the passage of the Swamp Land Grant Act of 1850, when the State of Mississippi selected the swamp and overflowed lands subject to the grant, which was done in 1852, they included these
171 lands among those selected by her. That in 1854 the selections thus made, including the lands on the island, were approved by the Secretary of the Interior, although no patent was issued to the State of Mississippi to any of the lands until 1858. Shortly after the approval of the selections made by the State of Mississippi, the authorities of that State, acting, no doubt, under the belief that the grant made by Congress was *in presenti* and that the approval, therefore, by the Secretary of the Interior vested a perfect title in the State to all the lands selected, and without waiting for the patent, sold these lands to one Ford. On February 28, 1855, it having been, no doubt, ascertained by Ford that the lands purchased by him had theretofore been sold by the government under the Pelham survey as lands situated in Arkansas, Hon. John Wilson, then Commissioner of the General Land Office, to whom, Hon. Jacob Thompson, then one of the representatives in Congress from the State of Mississippi, had mentioned the subject, in a letter written by him to Mr. Thompson in which he refers to a conversation had with him the day before, states:

"That it appears on reference to the plats in this office Island No. 76 was surveyed by the Surveyor General of Mississippi as a part of Township 21 North of Range 8 West of the Choctaw Meridian and Base Line, returned with his certificate of approval, bearing date the — day of October, 1836, and that the island No. 76 was surveyed under direction of W. Pelham, Surveyor General of Arkansas, in February, 1846, as parts of Townships 11 and 12 South of Range 1 East of the Fifth Principal Meridian in that State, and certificate

to this office the 23rd December, 1846. The island does not appear to have been offered at public sale in either State. I am of the opinion, from the inspection of the plats, that the island in question belongs to the jurisdiction of Mississippi and should not have been surveyed and returned as lying in the State of Arkansas. Still, I must qualify this opinion by stating that, if it should be found by measurements and evidence taken on the subject, that the middle of the main channel of the River as it existed in 1817, the date of the admission of the State of Mississippi, prescribed her boundaries was situated east of the island and remained unchanged until the
172 year 1836, the date of the Act of admission of Arkansas as a State, then the island undoubtedly belongs to the latter, but if, in 1817, the middle of the main channel was east of the island and in 1836, by changes in the bed of the river, was west of the island, then it will occupy the peculiar position of not being within the limits of either State according to the boundaries prescribed by the acts of admission."

On May 3, 1859, the Governor of the State of Mississippi wrote to Hon. Jacob Thompson, then the Secretary of the Interior, in relation to that matter, stating:

"Island 76 was confirmed to the State by the Federal Government and afterwards sold to William G. Ford. I am informed that this island is now claimed by the State of Arkansas. The enclosed letters from Major Downing and William Ford, with the certificate of the Secretary of State, contain all the information in my posession on the subject. You are hereby requested to adjudicate the case and to confirm or sustain the title of Ford through the grant to this State."

The letters referred to are one from W. G. Ford to the Governor, making his claim to these lands, and also enclosing a letter from A. Downing, at one time the Surveyor General of Public Lands for the State of Mississippi, in which Major Downing says:

"Island 76 was surveyed, I think, in 1830 or '31, as part of Township 21, Range 8 West. At that time, and for some years after, the island shoot, as it was called, was quite narrow. I think that about opposite the middle of the island the shoot was not over a hundred yards wide. I have been told that deer had been and could easily be shot from the eastern shore of the river upon the island, and from my own observation, I have no doubt but they could, for at that time I had never heard of a steamboat going up or down on the east side of the island. The main river then passed on the west side of the island. I think it was 1835 I spent some time in Township 21, Range 8 West, examining the land in that district. The east bank of the river opposite the island had not fallen in much. The island shoot at that time was quite narrow."

These communications were, by the Secretary of the Interior, referred to the Commissioner of the General Land Office, at that time Hon. Thomas A. Hendricks, of Indiana. Mr. Hendricks, on July 23, 1859, wrote the following letter to the Governor of Mississippi:

173 "As it appears on reference to the plats in this office, this island was surveyed by the Surveyor General of Mississippi

as a part of Township 21 North Range 8 West, Choctaw Meridian, Mississippi, and returned with the certificate of approval under date of October, 1836. It also appears that, under the direction of the Surveyor General of Arkansas, this island was surveyed in February, 1846, as a part of Township- 11 and 12, South, Range 1 East, Helena District, Arkansas, and returned with certificate of approval dated December 23, 1846. A proclamation for the sale of lands in the Helena District, including this island, was made and the tracts on said island were duly offered for sale on the 12th of July, 1847. Subsequently the greater portion of the tracts were entered and patents were issued to the purchasers prior to the 28th of September, 1850, the date of the swamp grant. The island as situated within the limits of the State of Mississippi has never been preclaimed for sale. The question of State jurisdiction over this island was presented to my predecessor, and he in a communication of the 28th of February, 1855, says: (quoting here the letter of Mr. Wilson hereinbefore referred to."

He then proceeds:

"With your letter I find the statement of A. Downing, dated 18 January, 1859, going to show that said Island 76 belongs to the Mississippi side and falls within our limits as defined by the treaty of 1763. Mr. Downing was formerly Surveyor General of Mississippi and great reliance is to be placed upon his statement. If, therefore, you will add to it his affidavit, with the testimony of any other disinterested witness, so as to bring the matter within the qualification of my predecessor's opinion, and stating that the island is of a swampy character—such is the additional testimony contemplated by Secretary McClellan's decision, as required by the 2nd Section of the Act of 2nd March, 1855—notwithstanding the island has been reported as swamp—the testimony will then be fully of equal grade to that required in cases analagous, and thereupon an account will be opened between the State and the United States, with a view to her reimbursement by treasury warrant of the amount of cash," etc.

Shortly thereafter, in the early part of 1861, the States of Mississippi and Arkansas attempted to secede from the Union, and the civil war having broken out, nothing further seems to have been done until after the close of the war in 1865, when the proper officers of Desha County, State of Arkansas, again assessed the lands as being in that State. The evidence fails to show what became of
174 Ford or the purchasers from the national government who bought them as Arkansas lands, and the probabilities are that they all died during the war. No one paid the taxes assessed against the lands by the Arkansas authorities, and the lands were forfeited to the State of Arkansas for the non-payment thereof, and they remained in that condition until 1882, when the State of Arkansas, under an Act of its legislature enacted in 1881, known as the "Overdue Tax Law," instituted proceedings in equity in the Circuit Court of Desha County for the purpose of having the lands sold for the taxes due thereon. As hereinbefore stated, there was a decree condemning the lands to be sold, and the grantors of complainants became the purchasers thereof.

It may be proper to state here, in connection with this matter, that when the legislature of the State of Mississippi, in 1836, created the County of Bolivar, as well as several other counties bordering on the Mississippi River, in defining the western boundaries, the language used in the Act of Congress admitting the State into the Union, "To the Mississippi River; thence up the Mississippi River," was followed by the legislature, but in 1838 the legislature, in defining the boundaries between Bolivar and other counties, used the language, "Thence down the main channel of the said Mississippi River."

In adopting the Revised Code of Mississippi, known as Hutchinson's Code, approved February 2, 1857, a concise history of the limits and boundaries of the State was included in the Code, and the boundaries of the State of Mississippi, in-so-far as it affects this case, are described as follows:

175 "Thence west along the said degree of latitude to the middle or thread of the stream of the Mississippi River; thence up the middle of the Mississippi River or thread of the stream to the place of beginning, including all islands lying east of the thread of the stream of said River." Art. 1, Sec. 2, p. 49, Hutchinson's Code.

Article 2 of the same section, found on page 50 of that Code, provides:

The counties lying immediately on the Mississippi River shall respectively have and possess jurisdiction and extend to the middle of the River or western boundary of the State within the space embraced by extending their boundary lines which strike the River on a continuous, direct course to the extreme boundary of the State, including all islands that may be within the limits thus defined.

The Constitution of the State of Mississippi adopted in 1868 merely provides that:

"The limits and boundaries of the State of Mississippi shall remain as now established by law." Art. 2.

The Constitution of the State adopted in 1890 defines the boundaries, so far as it is applicable to the issues involved in this cause, as follows:

"Thence west along said degree of latitude to the middle or thread of the stream of the Mississippi River; thence up the middle of the Mississippi River or thread of the stream to the place of beginning, including all islands lying east of the thread or stream of said River, and also including all lands which were at any time heretofore a part of this State." Art. 2, Sec. 3.

Section 4 of Article 2 provides:

"The legislature shall have power to consent to the acquisition of additional territory of this State and make the same a part thereof, and the legislature may settle disputed boundaries between this State and its coterminous States whenever such disputes arise."

The first act on the part of any of the officials of the State of Mississippi, after the Civil War, which in any way indicates a claim of this island as a part of the territory of that State was a resolution of the Board of Supervisors of Bolivar County, reciting that,

176 Whereas, many tracts of land in that county subject to taxation are not assessed upon the tax books of the county, men-

tioning among others the lands on Island 76 described by the Mississippi survey, the assessor was directed to assess them for taxation, which was accordingly done and the assessment made to "unknown owne." The taxes not being paid on these lands, they were in 1882 forfeited to the State of Mississippi, and not having been redeemed within the time prescribed by the laws of that State, were placed on the book of State lands of that State as lands forfeited to the State for the non-payment of taxes. In 1891 these lands were sold by the State of Mississippi to Hull & Curry, and immediately thereafter assessed to them for taxation by the proper authorities of Bolivar County. In 1892 Hull & Curry filed a petition with the Commissioner of State Lands of that State, reciting that, since purchasing them, they had ascertained that the lands were not subject to taxation in the State of Mississippi, as they were lying in the State of Arkansas, and asked for a refunding of the purchase money paid by them. The Act under which this proceeding was had is section 3831 of the Annotated Code of Mississippi, adopted by the legislature in 1892. That Act is as follows:

"If land be sold for taxes when no taxes are due on it, or it is not liable to be sold for taxes, the sum paid by the purchaser for the amount of his bid, and the costs of the sale and conveyance, with six per centum interest per annum, shall be refunded to him, or the holder under him, by descent or purchase, im-ediately or immediately, by the state or county respectively, in proportion to the amount received by each; and in such case the claim against the state shall be audited and allowed by the auditor of public accounts on due proof, with the approval of the governor and the attorney general, and he shall draw his warrant on the treasurer for the amount shown to be due; and the claim against the county in such case shall be allowed by the board of supervisors of the county, and paid out of the county treasury, on the certificate of the auditor of public accounts of the refunding of the state tax. If in such cases,
177 the money paid by the purchaser be not paid into the state and county treasuries, the collector shall be liable on his official bond to the purchaser for the amount so paid, and twenty-five per centum interest per annum on such sum, and the state and county shall not be liable. The provisions of this section shall extend to taxes collected for levee purposes where land is improperly sold, and the amount due in such case shall be paid to the proper person by the levee treasurer on the order of the levee board.

The board sustained the claim of Hull & Curry and directed the refund to them of the purchase money out of the treasury of the State, which was done. Hull & Curry thereafter failed to pay the taxes assessed against the land; whereupon it was again forfeited to the State of Mississippi. The Auditor of Public Accounts of that State (who is *ex-officio* the State Land Commissioner), being in doubt as to whether these lands should, in view of the former action of the Board, be placed on the land books of the State, called upon the Attorney General of the State for his opinion, and that official, in an opinion dated April 20, 1894, advised him to adhere to the former ruling of the Board and treat the lands as lying in the State of Arkansas. For some reasons not explained, the Land Commis-

sioner declined to follow the opinion of the Attorney General, but placed the lands on the books as lands belonging to the State. Thereafter, in 1899, the defendants in this case purchased them from the State of Mississippi, receiving proper deeds of conveyance therefor, and now claim title under these deeds.

There is no attack in the case at bar upon the titles to these lands acquired by virtue of the patents issued by the United States to the purchasers of the lands as Arkansas lands; but it is insisted that, although the title passed from the United States to these purchasers, the lands being in the State of Mississippi were subject to
178 taxation there and to sale for non-payment of the taxes, and that not lying in the State of Arkansas this court is without jurisdiction to determine the title thereto.

The island being uninhabited, there can be no doubt but that the act of the officials of the State of Arkansas in assessing these lands for taxation was the only act of sovereignty that could have been, under the circumstances, exercised over them by the State of Arkansas. Therefore, the conclusion naturally follows that the State of Arkansas did, ever since 1848, make claim to the island as being a part of her territory; but, on the other hand, can it be said that the State of Mississippi, after learning of the claim of the State of Arkansas, acquiesced in those acts of sovereignty on the part of the State of Arkansas? As early as 1838, and ever since that time, the legislature of that State claimed the western boundary to be in the middle of the River. In 1852 they selected them as swamp and overflowed lands, under the Swamp Land Grant made by Congress in 1850. In 1854, shortly after the approval of her selections by the Secretary of the Interior, the lands were sold by her to Ford. While it is true that there is nothing to show that these lands thereafter were placed on the tax books and assessed for taxation by the authorities of Bolivar County, that may be accounted for by reason of the fact that no patent having ever been issued by the government to the State of Mississippi, or to anyone else, they probably did not consider them as subject to taxation. In 1855 some claim to these lands must have been made by Hon. Jacob Thompson, one of the representatives in Congress from that State; otherwise the letter of Hon. John Wilson then the Commissioner of the General Land Office
179 of the United States, would not have been written. In 1858 the Governor of the State again made claim to these lands by addressing the Secretary of the Interior on the subject. The breaking out of the Civil War, and the confusion incident thereto after its conclusion will explain the delay between that time and the order of the Board of Supervisors of Bolivar County made in 1881 to place these lands on the tax books. At all events, that delay was not for so long a time as to estop the State from claiming its own by reason of acquiescence.

What was the effect of the action of the Board composed of the Governor, Attorney General and Commissioner of State lands in refunding the money to Hull & Curry and determining that these lands were not in the State of Mississippi, but in the State of Arkansas? Are the acts of this Board conclusive on the State of Mis-

sissippi? That the legislature could have invested that Board, or any other commission, with such powers is, no doubt, true. It may also be assumed that, if that Board had jurisdiction and power to determine that question, its acts would be conclusive on the State, but does the Act vest such power in that Board? A careful examination of the Act will not warrant this contention. What was intended by the Act, as I consider it, was to enable any person who had purchased lands from the State and whose title failed, by reason of the fact that there were no taxes due on them, or that they were not liable to be sold for taxes, to have the money refunded to him. It is true, the language used, "not liable to be sold for taxes," is broad enough to include lands not within the State and for this reason not subject to taxation, but it is hardly reasonable to suppose that the legislature would have granted powers to any board without using lan-
180 guage which was so clear that there could be no question as to its intentions. The fact that the same Act provides that, if the collector has failed to pay the money into the State and County treasuries, he shall be liable to a heavy penalty therefor, would indicate that one of the objects of the Act was to refund the money if lands have been returned delinquent after the taxes had been paid thereon by the owner. The language "Not liable to be sold for taxes" was, no doubt, intended to mean that where lands which, under the laws of that State, were exempt from taxation and yet were assessed and forfeited to the State for non-payment of the taxes, as no title would pass to the State by the forfeiture, the owner should be recompensed by the return of his money.

In Hubbard *vs.* Garfield, 102 Mass. 75, the Board of Assessors for a given year had struck off certain articles of property as not subject to taxation, and several years thereafter the Board, composed of different individual members, restored these articles of property to the tax list. The contention was that the action of the former board was conclusive, but the court said:

"The intention of the law is to be judged with reference to the nature of the proceedings which it affects and the character given to them by previous legislation, and with the aid thus derived, it is apparent that the assessors may add new names to the collector's list, as at least one legal mode of making the assessment. The mode would be less open to objection when the addition is made during the year by the same assessors and before the expiration of the collector's term of office, but the assessors constitute a tribunal with powers which imply a continual and uninterrupted condition not limited to the individuals who at any given time compose it. And if this were otherwise, the law in question expressly gives the power of reassessment to the assessors for the time being. If it be said that this construction gives to this class of town officers great power over the person and property of the citizen, the answer is that it is no more than must necessarily be had for the discharge of the important and difficult duties connected with taxation, and no more
181 than has been exercised from the earliest time under existing laws.

so N. Y. The same conclusion was reached in Lamb *vs.* Commissioners

In People *vs.* Roberts, 155 N. Y. 408, 413, the court, in speaking of the determination of assessing and taxing officers, say:

"We think there is no ground for holding that the action of mere assessing officers can determine that property is exempt from assessment for one year and preclude the State as to the taxes imposed in succeeding years and prevent other officers from complying with the clear and plain requirements of the statute."

An Act of the legislature claimed to vest in any board the power to determine questions pertaining to the sovereignty of the State over territory cannot be presumed to have been granted by a State unless the language used is such that no other conclusion can be reached.

As was said by the Supreme Court of the United States in Cummings *vs.* Chicago, 188 U. S. 410, 430:

"If it (Congress) had intended by the Act of 1899 to assert the power to take under national control for every purpose and to the fullest possible extent the erection of structures in navigable waters of the United States that were wholly within the limits of the respective States, and to supersede entirely the authority which the States, in the absence of any action by Congress, have in such matter, such a radical departure from the previous policy of the government would have been manifested by clear and explicit language. In the absence of such language, it should not be assumed that any such departure was intended."

It is a well settled principle of law that the State cannot be precluded by the laches of its officers from asserting any right or claim, nor is the State bound by the errors and mistakes of its officers in making settlements in its behalf. Cooke *vs.* United States, 91 U. S. 389.

The opinion of the Attorney General of the State of Mississippi, while entitled to the highest respect, is not conclusive on that State or any of the courts. The instances in which the courts have
182 declined to follow the construction placed upon statutes by Attorneys General of the United States or of the States are numerous, and the fact that the State Land Commissioner of that State declined to act upon that opinion, although given in response to his own request, clearly indicates that even executive officers in the State of Mississippi do not consider the opinions of the Attorney General as anything but advisory.

Upon the facts as found by the court in this case, there was no such acquiescence on the part of the State of Mississippi nor exercise of sovereignty by the State of Arkansas for such length of time as would warrant the court in holding that the State had lost its territory. The finding being that the lands in controversy are not situate in the State of Arkansas, it follows as of course that this court is without jurisdiction to try the case on its merits, and the bill will be dismissed for want of such jurisdiction.

Endorsed:—Filed Jan'y 10, 1906. W. P. Feild, Clerk.

183 The complainants first read in evidence the original pat- Arkansas to the land in controversy consisting of the Exhibits to the Bill of Complaint numbered one to ten, inclusive.

See Folio 19 this Record for these Exhibits.

The complainants next read in evidence the following exhibits to the Bill of Complaint.

1. Deed of the State of Arkansas to Sallie H. Murphy.
   See Folio 46 this Record for Deed.
2. Deed of J. S. Ross, Commissioner to Sallie H. Murphy.
   See Folio 48 this Record for deed.
3. Patent from the State of Arkansas to Joe Evans.
   See Folio 42 this record for Patent.
4. Deed from Joe Evans and wife to Sallie H. Murphy.
   See Folio 44 this record for Deed.
5. Deed from Sallie H. Murphy to Moore and McFerrin.
   See Folio 52 this Record for Deed.
6. Abstract of Title to lands in controversy.
   See Folio 106 this Record for Abstract.

The complainants next introduced the following testimony and exhibits thereto.

184 Capt. MARSHALL J. MILLER, being first duly sworn, deposes and says as follows:

Direct examination by Capt. MYERS:

Q. State your name, age, residence and occupation.

A. Marshall J. Miller, am nearly 78 next month. Pilot and Commander. Live in Memphis at No. 34 South Orleans St.

Q. Please state how long you have been a Pilot and Commander of vessels on the Mississippi River and in various capacities.

A. I commenced in September 9th, 1839, from Louisville to New Orleans on the Steamboat "Paragon." From St. Louis to New Orleans and Nashville to New Orleans.

Q. In what capacity did you act at that time in '39?

A. As Pilot. Several years afterwards I was Pilot and Commander.

Q. What do you mean by Commander?

A. Captain of a steamboat.

Q. State whether or not from 1839 you have been acquainted with the channel of the River at what is known as Island No. 76 in the Mississippi River?

A. I have been acquainted with it ever since '39.

Q. When you first became pilot or Commander in '39, state on which side of the River the main channel of the Mississippi River was as to Island No. 76.

A. On the Mississippi side. The channel crossed from Cork's Point to Wehawk Plantation, then a woodyard. Afterwards the channel dropped down to Mohawk Plantation and was that way for a number of years.

Q. Please examine a map shown you which is a photo-lithographic exemplification of the survey of the river at that point on May 31, 1830, certified by Binger Herman, Commissioner of the Land Office of the United States at Washington, and state whether or not the map shows practically the position of the main channel of the Mississippi River in 1839 when you first became acquainted with it.

185 A. In '39 the bank at Cook's and along down in the bend had washed.

Q. My question is whether that practically represents the position?

A. That represents it very good. It is a very good representation of the channel of the river at that time.

Q. This map by the Land Commissioner is certified as of date January 11th, 1899. Will you please write your name on the left hand corner in the margin as identifying this map as showing the condition of the river at that time?

A. I will do so.

Q. Will you please state from 1839 what character of boats and the names of any of them, if you recollect, that you ran past that place, and whether or not that was each year up to the last date and in what capacity. Commence in '39, Captain.

A. The first boat that I went down on that way was on the "Boman Paragon" at different points from time to time. "Ellen Cookm*an*," "Calaran," "Nashville," "Ira Hill," "Bulletin No. 2" and a number of other boats. About the last boat that went down there was—I don't remember now the last boat. Those were up to three — ago. I was on the "John Simmons" when I run down there. I was on the "Gov. Allen" that run from New Orleans to here—weekly trip*t*. "Gen. Quitman" and "Cargo"—weekly trip*t*. I run the Vicksburg trade—the Memphis to Vicksburg trade and established the trade between here and Vicksburg on the "Dan'l Boone," and a number of other boats I couldn't mention. I don't recollect whether the "A. J. White" was the last boat I ran down from here to Arkansas City or not.

Q. State whether since 1839 the channel of the Mississippi River has changed from being on the Mississippi side to the Arkansas side. If it has done so, state about what year that change was made as near as you can recollect and your reasons for knowing.

186 A. I think it changed the latter part of '60 from the fact that in '65 I was on the packet running to Vicksburg and running to New Orleans. I know the channel was down on the Mississippi side and when the water would get down low the channel would go back *in* the Mississippi side. Eventually it closed it out. I disremember what year.

Q. Can you give me about the year when the channel was changed from the Mississippi side to the Arkansas side, was it in '80 or '81 or '82?

A. Somewhere along in the early part of the eighties, I think. When I was on the packet you know we run either way. We would squeeze a point to get into the landing in behind the Island and get

out until it was closed by water. Very frequently we would have to go up to Melrose Landing and other landings to get out and then come back again.

Q. Was that change of channels made in one year or two years?

A. It took several years, I think, to do it, before it quit entirely.

Q. Then, if I understand you aright, up to early in the eighties, the main channel was on the Mississippi side?

A. Yes, sir.

Q. And you could only run through on the Arkansas side in high water.

A. We would run through that way for convenience, for a short cut. Most all the boats had no business down there. They would go through that way for it would be shorter. When the water was sufficient to go up or down they went that way.

Q. But the main channel was on the Mississippi side during that time?

A. Not all that time. I am speaking of high water, these through boats wouldn't take the trouble to go down the bend. They could go through much quicker and there was no business to attend to there.

Q. That was in high water?

A. Yes, sir.

187 Q. But still the main channel was on the Mississippi side during that time. Up to about early in '80?

A. Up to about '80 it was on that side.

Cross-examination by Mr. SCOTT:

Q. When was your first trip down the river, Captain? About what date was your first trip down the river?

A. I left Louisville on the 9th day of September, 1839. Low water reached me after the middle of September?

Q. Was that in low or high water?

A. Low water. It was very low. That year it was one of the lowest waters that ever was known.

Q. That was in 1839?

A. Yes, sir, in '39 it was the lowest water we have ever had in the Mississippi River.

Q. How old were you then, Captain?

A. About seventeen. I was seventeen in August and the following September I was a pilot.

Q. Did you start out as a pilot?

A. I started out as a pilot, learned under my father and brother. My father was an old barge man.

Q. That was the beginning then of your apprenticeship? Was it?

A. That was the beginning of my career as Pilot.

Q. Are you still a pilot?

A. I haven't been doing anything for the last three years. I had La Grippe and have not been able to go on with my work.

Q. How long ago did you have the Grippe?

A. Over nine years I have had it. The last boat I was on was the "Annie Laurie."

Q. And you haven't done anything as a pilot for some years then?
A. About three years.
Q. When you speak of the channel of the river being on the Mississippi side in 1839, at that time what was the condition on the other side?
A. The water was running through it during low water.
188 Q. There was quite a considerable volume of water running through the other side, was there not, at that time?
A. In low water we didn't go at all but at a fair stage of water we would go up.
Q. In '39, at a fair stage of water, you could go on the Arkansas side without much trobule, could you not?
A. It was no trouble—light craft—boats—those days we could go up there in low water.
Q. You travelled up and down the river continuously, Captain, from '39 until within three years ago?
A. Excepting a portion of the war.
Q. And the channel of the river remained on the Mississippi side just as it was in '39 up to '81?
A. Somewhere along there.
Q. Where were you in 1846, Captain?
A. In 1846?
Q. Yes, sir.
A. I was on some of these packet runs—I don't remember now what boat it was—plying below here.
Q. Did you pass Island 76 during that year?
A. Yes, sir.
Q. Where was the channel? Where was the channel? On which side?
A. On the Mississippi side.
Q. It was on the Mississippi side in 1846?
A. Yes.
Q. You are positive of that—you remember that it was?
A. Yes, certainly.
Q. About what is the width of the channels on the two sides of the island?
A. Well, from shore to shore on the Arkansas was the widest. From the island to the Mississippi shore was the narrowest. There was a wide space between the island and the main shore, between the island and Arkansas and between the Island and Mississippi, wasn't so wide.

189 (By Capt. MYERS:)
Q. But that was deep channel?
A. Deep, yes.
Q. That was the case in 1839 that it was the wider on the Arkansas side?
A. Yes, sir.
Q. Is the change of the channel of the river in Mississippi as a rule sudden or gradual?
A. Gradual. It shapes out its course in maybe two or three sea-

sons before it changes. One or two or more seasons. What causes the change, maybe it is changed above and below and that causes these other changes. A change in the current or a cave in a bank or a filling up, I think the great cause of the change there was the change of the channel at Ozark, Ark.

(By Capt. MYERS:)

Q. When did that occur, about '80?

A. A little before that and there was a change when the cut off was made at Napoleon. That was during the war.

Q. That channel is now on the Arkansas side of the river?

A. Yes, on the Arkansas side.

Re-examination:

Q. In your cross-examination you speak of your father giving you some information in regard to this matter. How long was he a pilot or Commander on the Mississippi River before you?

A. He commenced barging before 1802 and '3. Commenced barging and building barges just below Frankfort, Ky., one mile below Frankfort. A place called Leesburg. The first barges or vessels were built there and he commenced barging down the river in 1812 during the war between England and the United States. I learned under him. He gave me all the information in regard to islands, numbers, channels and everything pertaining to the lay of the river. Also my oldest brother. I learned under them.

Q. And you learned the river at that point under your father who had been acquainted with it from 1802 and your older brother, is that so?

190 A. Yes sir.

Q. State whether or not they represented to you where the channel of the Mississippi River was in 1812 and from the time you commenced? Was it on the Mississippi side?

A. On the Mississippi side. One of the first woodyards established on the Mississippi River was just above 76 on the Mississippi side. One of the first woodyards that was built. The plantations were opened by woodyards selling wood to steamers.

Q. And your father and brother represented to you that the channel was on the Mississippi side at that time, during that period?

A. Yes, and gave me where the channel run from the time he commenced steamboating.

Recross examination:

Q. Did he ever mention whether there had been a change of the channel in the river?

A. He would tell me what change, whether there had been a change.

Q. Had there ever been a change in the channel?

A. No, sir, not in his memory and not in my brother's memory.

And further this Deponent saith not.

MARSHALL J. MILLER.

Capt. THOMAS A. WILCOX, being next duly sworn, deposes as follows:

Direct examination by Capt. MYERS:

Q. Please state your name, age, residence and occupation.

A. Residence Memphis, 129 Mill St., Memphis. Thos. W. Wilcox, age 72 and about three weeks. Occupation—Master and Pilot of steam vessels on the Mississippi River. To make it short, you can see my license.

Q. How long have you been engaged as Pilot and steamboat man on the Mississippi River between Memphis and New Orleans or at a point below Island No. 76 on the Mississippi River, and how
191 long have — known that island?

A. I have been engaged on the Ohio and Mississippi Rivers since December, 1847, but at no one particular "pint" there along.

Q. How long have you known Island 76 on the Mississippi River and where the channel was?

A. Since 1847. I was at Louisville in December and come on down the river and manipulated up and down the river ever since.

Q. Up to what date?

A. Up to the present time or about the 17th of this past May. Unfortunately I sunk a boat and had to swim ashore to wind up my career.

Q. In 1847, when you first passed Island 76, on which side of the river, of the Island was the channel, on the Mississippi or the Arkansas side?

A. It was on the Mississippi side.

Q. Since that time have you been, as pilot, passing that point every year? If not so, how often?

A. Every year but one or two years during the war and very often. I run from Arkansas River, White River to New Orleans and Vicksburg, Greenville to Arkansas City in the late years.

Q. From Memphis?

A. Yes, sir, they were about headquarters.

Q. Captain, if there had been a change in the channel of the river at 76 since 1847 from the Mississippi side to the Arkansas side, please give as near as you can the date of the change.

A. Well, the river, according to my judgment, knowledge and experience and time and time again going over the river, it was several years changing and finally locating itself. I think we quit running about 1882 and '84. We never had much business down on the Mississippi side after that.

Q. You say you quit running it between '82 and '84. What do you mean? You quit running the channel on the Mississippi side and changed to the Arkansas side?

A. Yes, that is what we term the channel on the Mississippi side.

Q. You think the change occurred in about between 1882 and '84?

A. Yes.

192 Q. You are not exactly certain about the date?

A. No, I couldn't tell the exact date, because I used to have to do a good deal of business.

Q. Was the change made in one or two years?

A. I think it was made from about 1882 to 1884, but in the fluctuation of the river, 6, 8 or 10 feet fall would change our business. If we got a little rise and had a little business there in the cotton season (which was our principal business).

Q. You mean that in high water you could run the river on the Arkansas side, but in low water you couldn't run it on the Mississippi side, is that what you mean?

A. About '84.

Q. After about '84 you had to go on Arkansas side?

A. Yes sir.

Cross-examination:

Q. Captain, in '47, when you first remember the river, which was the broader side of the river? Which side of the Island was the broader?

A. Well, to take from the Island, the Island caved in there rapidly, which was one cause of the channel going that way—that immense sand bar was the widest.

Q. The river then between the Island and Arkanssas was *the* broader than the river between — Mississippi.

A. Oh, yes, much wider.

Q. Much broader.

A. Yes.

Q. That was the case in 1847?

A. Yes.

Q. What is the width of the river there now, Captain, about?

A. I couldn't tell you exactly I helped survey and sound it very frequently in the last ten or fifteen years, but I couldn't keep up with it now.

Q. It is about the same width now that it was then, is it not?

193

A. Oh, My Lord, No. Acres and acres of it have caved in. It has widened out.

A. That is at the head?

A. It is twice or three times as wide now as it was then.

Q. At that time then, instead of all the water passing down the channel, it divided itself at the head of the Island?

A. At the time I first traveled over the river the river—the main channel—and you might say all the water—eight or nine tenths of it, went down to the left.

(By Capt. MYERS:)

Q. You mean the East?

A. The Mississippi side.

Q. But the Mississippi side was much the narrower then?

A. Yes, sir, because it formed a sort of funnel, this shape, to receive the water and would go down to a point, a wide strip of the river, between Ozark. It was very wide and flat.

Q. And gradually, then, the river, from '47, changed its channel to the Arkansas side.

Q. That has been recently done.

Q. Was that suddenly done?

A. Oh, no, several years. We had to run sometimes down the Mississippi side of the channel; maybe in a few months we would have to run on the Arkansas side.

Q. There was no sudden change at all?

A. No, sir.

Q. That is the way the channel is usually changed?

A. You can locate several different points and locations on the river and you will find one location will change very suddenly and the water will all leave and go over probably in three or four days, and that you will catch another part where the river was working along and it will take it several months or a year or two to find its way. Sudden rises out of Arkansas or Ohio will cause these things. A man has to make a great many studies about those things and the fluctuation of the water, such that I can't explain to you so you can understand, but if I was out on the river, I can catch it. It
194 is mapped out in my head better than I can map it here.

Re-examination:

Q. Please examine the plat here shown you, which is a photo lithographic exemplification of Township 21, R. 8 West, Choctaw District of Mississippi, certified to by Binger Herman, Land Commissioner of the United States at Washington, and state whether or not that exemplification shows about the status of the channel of the Mississippi River in 1847 when you first navigated it at that point, and as it continued up to early in the eighties—1881 to 1884.

A. Well, this is a very good representation. I am pretty tolerably familiar with those spaces in there, with those strips and parcels of land in there at those places and clean on around here, but there has been a great many, not sudden changes, slow changes in the channel and the movements of the river here in this location. There's three channels here now. This, when the water gets a little low, you can walk across it. I navigated this and did business around that bend with barges and steamboats as long as there was any water in it, and very often we could go in up here, and take on a cargo of cotton and go back. But, to the best of my recollection, the channel left there between '82 and '84 and went over on the right side.

Q. Please write your name on the margin of this map as showing the condition of the river at that time.

A. I will do so.

Q. It went over on the right to the Arkansas side?

A. Yes, sir. Simply from the fact that there used to be a considerable plantation on there, a man that I knew well, lived there. A man named Rouse lived there. There was at one time a small horse gin on there and several negro cabins and an overseer's place. I don't know at that time who it belonged to. Now this improved
195 property stood near the head of the Island but that is all caved in and gone. The channel runs in down to the right of that now.

Q. You mean to the right, going down the river?

A. There's three channels. One goes down close on the head of that, down there a little piece and then out a little. Another one pulls out about midway and goes out in this direction. Another one pulls right down Cork's point and over there and back again to Cork's point and falls in down towards Kentucky Landing.

(Witness referred to map while answering.)

Q. In cross-examination you say that in 1847 the space between the Island and the Arkansas side was wider than that between the Island and the Mississippi side.

A. Oh, yes.

Q. Now, at that time, whilst the space was wider, is it or not a fact that the channel was on the Mississippi side?

A. The channel was undoubtedly on the Mississippi side.

Q. Then, if I understand you aright, it didn't make any difference between the width of the distance between the shore and the Island, but the question is the depth of the water.

A. That is the question. I was going to relate that. In many places in the Mississippi River it is funnel shaped, a wide space up here and the water comes in a narrow space to the bank and leaves a wide bar, it is a deep bar or a shoal bar.

Q. How was that space between the Arkansas side at that time and the Island? If I understand you right, you say you could nearly walk across it sometimes, is that so, between the Arkansas shore and the Island?

A. Yes, sir, I have seen it so lo*t* I have seen cattle and mules and horses and things—they might make a lick or two to swim—I saw stock of various kinds fording the river from the Arkansas shore to the Island. Saw it several times.

196 Q. At the same time you were running steamboats on the Mississippi side?

A. Oh, yes.

And further this deponent saith not.

THOS. W. WILCOX.

Capt. A. E. DRINKWATER, being duly sworn, next deposed as follows:

Direct examination:

Q. Please state your name, age, residence and occupation.

A. Name—A. E. Drinkwater, age 62, No. 90 Madison, Memphis. Occupation Master and Pilot of steam vessels.

Q. How long have you been engaged as Pilot and Master of vessels on the Mississippi River between Memphis and points below, passing Island 76 in the Mississippi River?

A. Since 1855.

Q. How continuously have you been in that business?

A. Well, pretty near continuously, as is usually the case with river men. Sometimes off of that part of the river for a year or two and sometimes—seldom longer than that.

Q. In 1855 when you first navigated that river as pilot, passing Island 76, where was the main channel of the Mississippi River, on the Mississippi side or the Arkansas side of that river?

A. On the Mississippi side, sir.

Q. If there has ben any change in the channel of the Mississippi River at that point from the Mississippi side to the Arkansas side, please state, as near as you can, when that change occurred?

A. There was kind of a lingering change I think. There has been water on both sides of the Island in the past few years. At times the best water has been on one side and at other times on the other.

Q. When you say the last few years, how many years do you mean? how far back?

197 A. About two years ago, I think. Three years anyway.

Q. In your recollection when did the channel change in low water for all boats from the Mississippi side to the Arkansas side?

A. Well, it was about '82 I think the channel was usually navigated on the Arkansas side for heavy boats.

Q. Before that, the channel was on the Mississippi side?

A. Alternately it was, yes, sir.

Q. Do you mean to say that in high water boats could run on the Arkansas side, but in low water, before that time, they could run on the Mississippi side?

A. Yes, sir.

Q. Did that change occur in one year or two years?

A. No sir, that occurred in I suppose over a part of ten or fifteen years that was the condition of that part of the river.

Q. You mean ten or fifteen years back from this time?

A. Yes, sir.

Q. The channel is now on the Arkansas side? Isn't it?

A. Yes, sir.

Q. Are you thoroughly acquainted with that part of the river since 1847?

A. Not '47.

Q. '55 I mean?

A. Yes sir.

Q. And you know what you are talking about?

A. Yes sir.

Cross-examination:

Q. Are you still a pilot?

A. Yes, sir.

Q. Running on the river now?

A. I was last week. I am not this week.

198 Re-examination:

Q. Please examine the plat here shown you—photo-lithographic plat of Township 21, R. 8 West, Choctaw Division of Mississippi, certified to by Binger Herman, Commissioner at Washington, and

state whether or not that shows the condition of the main channel of the Mississippi River when you first went on the river in 1855?

A. Yes, sir that is similar. Of course there are little excavations and cuttings, the bank has changed appearance gradually but that has a general outline of the appearance at that time.

And further saith not.

A. E. DRINKWATER.

199 *2nd Deposition of*

Captain THOMAS W. WILCOX being first duly sworn testifies as follows:

Direct examination by D. E. MYERS:

Q. 1. State whether or not you are the same Captain Thomas W. Wilcox who gave a former deposition in this case?

Ans. I suppose I am but I don't recollect the dates.

Q. 2. I did not ask you about the dates. Are you the same Capt. Thomas W. Wilcox that gave the former deposition in this case in regard to your knowledge of the channel of the Mississippi River and in regard to a certain Island, Island No. 76 in the Mississippi River south of Memphis?

Ans. Yes, sir, I suppose I am. I never gave but one deposition in the case.

Q. 3. Was that deposition in this case of Moore & McFerren against R. J. McGuire and others in the Circuit Court of the United States at Little Rock?

Ans. Yes, sir I was.

Q. 4. In taking that deposition the complainant either overlooked asking you, or he did ask you and the stenographer failed to get it, the question as to whether or not you ever lived at Napoleon, Ark. Now please state, whether or not you ever lived or resided at Napoleon, Arkansas, if so, between what dates, also state how far Napoleon, Ark., is above Island No. 76, also please state whether or not from actual knowledge whilst you lived at Napoleon Ark., you know that the main channel of the Mississippi River was on the Mississippi or on the east side of Island 76.

Answer each paragraph of this question fully.

Ans. I first went there to reside in 1885, the last part of August. I lived there for a number of years, bought property there, done business there pilotted boats on the river; I lived there between 1855 and 1862. It was my home for a number of years. Well it is really between twelve and fourten miles from Napoleon to Island 76. It used to be exactly twelve miles from east Napoleon to Cork
200 Point, now it is a little further. There has been changes in the river channel since then. Now it is about 1½ miles further, or two miles further. A big sand bar there makes the distance wider and it would measure about 1½ miles across it to the east side of Island 76.

Yes, the main channel is on the east side of Island seventy six, it was on the east side. I pilotted there and knew it from actual knowl-

edge, I was pilotting there some years before the channel changed. I know it from experience and observation, trips up and down the river, running steam boats, etc. I always pulled out a little above Cork Point and crossed over to the head of the Island.

Q. 5. Please state whether during the time you resided and did business at Napoleon, Arkansas you had any barges of coal or other products to get aloose from you, and whether or not they stranded it in the chute west of the island or between the Arkansas Bank and Island 76.

Ans. Yes sir, during my stay there I handled several hundred barges of coal and other various stuff annually, but at this occasion that I speak of is what we term a fuel flat. It had several hundred tons of this cheap nut coal on it, and occasionally somebody would come around and steal the line off your barges it was that my barges got aloose, and drifted down to the head of the island and lodged there, and they were picked up by an old man named Roberson, who lived on the Ozark Island right above Col. Patterson's place. The old man came up to notify me about the barges, he was fully aware nobody else had any barges near there except myself, not nearer than Memphis, and I went down with him, and he wanted to charge an enormous price for catching it and putting a line on it. It was already held, because it drifted in towards the bank. A good many instances of that sort takes place over there that we have to contend with.

Q. 6. Where was the channel at that time, was it on the east side of the island or the west side?

201 Ans. It was down to the left on the east side, the Mississippi side.

Q. 7. State where this coal barge had lodged. Was it on the short of the Arkansas side?

Ans. Yes, it has cut into the head of the chute, like, and lodged.

Q. 8. Why did it lodge there?

Ans. Because there wasn't water enough for it to go through on the Arkansas side at that time, whereas, there was water enough for it to have gone through on the Mississippi side if it had drifted that way. Yes there was the main channel on the Mississippi side and it would have gone on down.

Q. 9. While you lived at Napoleon, Ark., from 1855 to 1862, about how often did you see the channel of the Mississippi River at Island 76?

Ans. I couldn't tell how often, but frequently. Numbers of times.

Q. 10. Was the main channel of the river on the Mississippi side during this entire time or not?

Ans. Yes sir. It was. And I think to the best of my recollection that the channel of the Mississippi River was down by Neblett also.

Q 11. Was the channel that you speak of as being down by Neblett, was that the Mississippi side or the Arkansas side?

Ans. It was the Mississippi side. East side of the island.

Cross-examination waived by A. Y. Scott for defendants.

And further deponent saith not.

THOS. W. WILCOX.

Indorsed: Opened & published by rule of Court, Dec. 11, 1901. W. P. Feild, Clerk.

202 Ben G. Meeks, a witness on behalf of the complainants, being first duly sworn, deposes in answer to the interrogatories propounded him as follows, to-wit:

Int. 1. State your name, age, occupation and place of residence.

A. My name is Ben G. Meeks; age 29 years; occupation Clerk of Desha County, Arkansas, and residence Arkansas City, Arkansas.

Int. 2. What official position do you occupy now, and how long have you occupied it?

A. I occupy the official position of Clerk of Desha County, qualified in November, 1900.

Int. 3. If you answer, to the last interrogatory, that you are the Clerk of the County and Circuit Courts of Desha County Arkansas, state whether or not you have the assessment books and tax books of said county in your custody as such officer.

A. As such officer as Clerk of Desha County, Arkansas, would say that I have the assessment books and tax books of said Desha County in my custody.

Int. 4. Please state, from said books—assessment and tax books, or both—in your custody from what date the following lands have been assessed for taxes to various parties in Desha County, Arkansas, giving the earliest date, and down to the present time, to-wit:

N E Frl. ¼ of Sec. 35,.....	15.08	acres
S E " ¼ " " 35,.....	79.04	"
Total Frl. Section..	94.12	"

in Township 11 South, Range 1 East, of the Fifth Principal Meridan.

North Frl. ½ of Sec. 36,....	82.72	acres
E. ½ of S W ¼ " 36,....	80.00	"
S E Frl. ¼ " 36,....	26.96	"
W. ½ of S W of " 36,....	80.00	"
Total Frl. " 36,....	269.68	"

in Township 11 South, Range 1 East, of the Fifth Principal Meridan.

203 Also Frl. Section 1 in Township 12 South, Range 1 East, composed as follows:

N E Frl. ¼ Sec. 1, ...	70.89	acres
N W Frl. ¼ " 1, ...	137.38	"
S W " ¼ " 1, ...	10.56	"
Total Frl. Sec.	155.83	"

Also the following Frl. Sec. 2, Township 12 South, Range 2 East, composed as follows:

N.	Frl. ½ of N E Frl ¼, Sec. 2	65.14	acres
S.	Frl. ¼ and S ½ of N E Frl. ¼	160.09	"
S. W	" ¼ of Sec. 2	35.92	"
	Total Frl. Sec. 2	261.15	"

The above property comprising Island 76 in the Mississippi River.

A. I have examined the tax and assessment books in my office and find that the tracts of land set out in the Interrogatory have been regularly listed and taxed from the years 1865 to present date. When I say taxed, I mean placed on the tax books for each year. I find part of the tracts forfeited and sold for taxes to the State for tax 1871-2-3-4-5 & 6—yet they were listed in the tax books for each year.

Int. 5. Please state anything else you may know of interest in this case touching the date at which said lands were first listed for taxation in Desha County, Arkansas, and showing that they have been continuously listed for taxation in said county, or placed on the tax books up to the present time.

A. I do not find in my office any tax or assessment records prior to 1865; I understand that some of the records prior to that date were lost or destroyed in moving the records from the old county site by heavy waters, and cannot testify as to the tax condition of these lands prior to that time. I further certify that as to Interrogatory 5th, Mrs. Sallie Murphy paid taxes on the land described therein from 1884 to 1887, the time sold to Moore & McFerrin, who paid taxes thereon to the present date.

And further deponent sayeth not.

(Signed) BEN G. MEEKS.

Endorsed: Filed May 10, 1902. W. P. Feild, Clerk.

204 E. H. NALL being first duly sworn deposes as follows:—

Direct examination by D. E. MYERS:

Int. 1. State your name, age, residence and occupation, and how long you have been engaged in the office you now hold if you hold one? State your official position.

A. E. H. Nall; 52; Jackson, Mississippi; State Land Commissioner. I have occupied that position since July 2nd, 1898.

Int. 2. State whether or not in your official position you have in your custody and control any of the books appertaining to the assessment and collection of taxes, and disposition and sale of lands in the State of Mississippi? State generally what books they are.

A. The Redemption Land Books were transferred to this office by an Act of the Legislature on the 26th of February 1902. The Forfeited Land Sales Books have been in this office since 1892. The Forfeited Tax Books originated in this office in 1892 by Act of the Legislature, having passed the date of redemption. The Act is as follows: "There shall be a land-office, to be kept at the capitol by the land-commissioner, wherein shall be deposited the records of the surveyor-general's office turned over to this state by the United States,

all field-notes, plats, and maps of surveys of lands belonging to the office of swamp land commissioner, and all other papers, documents, and records which ought to be kept in the land office; and all such records now in the possession of any other officer shall be delivered to the land-commissioner." Code of 1892 of Mississippi 2558.

Int. 3. After that time what other books were transferred to your office?

A. State Land Records and Levee Land Records, and all other land records except Assessment Rolls now in the Auditor's office be transferred to the office of the Land Commissioner, and be hereafter held by the Land Commissioner instead of the Auditor, as appears by Section 1, Act of the Legislature of Mississippi, approved
205 February 26, 1902.

Int. 4. What date were they turned over to your office?

A. About February 26, 1902.

Int. 5. You never got the assessment roll?

A. No sir.

Int. 6. Where did that remain?

A. In the Auditor's office.

Int. 7. Please turn to your records and state when Island 76 in the Mississippi River first appeared upon the tax books of the State of Mississippi, and give the name of the book in which it is in.

A. All of Section 36, Township 21, Range 8 West, and all of fractional Section 27, Township 21, Range 8 West, was assessed in 1881 to unknown parties, appears by the records to have been sold March 6th, 1882 for the delinquent taxes due thereon for the fiscal year 1881.

Int. 8. Please give to the stenographer a verbatim copy of that entry as it appears on your records.

A. "To whom assessed, unknown; when sold to state, 6th of March, 1882; all of Section 36, Township 21, Range 8 West; all of fractional Section 37, Township 21, Range 8 West—824 acres. Printer's fee, 20¢; State tax, $12.36; County tax, $74.16; Sheriff's fees $1.00; Pencil memorandum Island No. 76. When redeemed and purchased from the State, 28th of September, 1891; J. T. Currie and M. A. Hull."

"To whom assessed, unknown; when sold to state, 6th of March, 1882; all fractional Section 37, Township 21, Range 8 West, 185 acres. Printer's fees 20¢; State tax, $2.88; County tax, $17.28; Sheriff's fee, $1.00; in brackets in pencil Island No. 76; when redeemed or purchased from the State, 28th of October 1891; J. T. Currie and M. A. Hull." The above appears on State and Levee Lands, Bolivar County, page 33.

Int. 9. What next occurred in regard to these lands embraced in Island 76, as appears from the records in your office, giving the book?

206 A. Register of State Deeds in the Levee District. Register of deed made by the Auditor, the same under requirements of Chapter 10 of Campbell's Code of 1880.

Int. 10. Please give a verbatim copy of the record as it appears.

A. "Date of sale to the State, March 6th, 1882; date of purchase

from the State, September 28th, 1891; name of purchaser, J. T. Currie and M. A. Hull. Description of land purchased, land is in Arkansas, marked in red ink opposite all Section 36, Township 21, Range 8 West, 824 acres. Treasurer's fee for registering 50¢; Auditor's fee for making deed, 55¢; amount of Auditor's, Sheriff's and Clerk's commissions, $13.95; Sheriff's cost of sale, $1.00; Clerk's fee for recording land sold to State, 10¢; State tax, general fund, $24.22; State tax, school fund, $3.26; the County tax $110.48. Cancelled November 23rd, 1892, and State tax and Int. refunded, marked in red ink; Total amount, $154.06."

"Date of sale to State, March 6th, 1882; date of purchase from the State, October 26th, 1891; name of purchaser, J. T. Currie and M. A. Hull. All fractional (land in Arkansas, marked in red ink) Section 37, Township 21, Range 8 West, 185 acres. Treasurer's fee for registery, 50¢; Auditor's fee for making deed, 55¢; amount of Auditor's, Sheriff's and Clerk's commissions, $1.70. Sheriff's cost sale, $1.00; Clerk's fee for recording the land sold to the State, 10¢; State tax, general fund, $6.23; State tax, school fund, 74¢; County tax, $27.90. Cancelled November 23rd, 1892, and state tax and Int. refunded, written on line below the description of the land in red ink; total $38.72."

Int. 11. From the record—the last quotation you gave in red ink—you state is on the line below?

A. Yes sir.

Int. 12. Is there any doubt from the record that that is merely a clerical error being put below the line opposite the description?

A. It appears to me that it is a clerical error.

207 Int. 13. Does it not appear from the face of the error there that that last quotation in red ink was intended to be put opposite fractional Section 37, Township 21, Range 8 West? State how that would seem?

A. I think so.

Int. 14. You spoke of the last book read from being one from the Auditor's office. Is that one of the books turned over to you by the recent Act of the Legislature from the Auditor's office?

A. Yes sir.

Cross-examination by A. Y. Scott:

X Int. 1. The assessment rolls are not in your office are they, Mr. Nall?

A. No sir.

X Int. 2. You don't know when Section 36, Township 21, Range 8 West, and Section 37, Township 21, Range 8 West, was first assessed for taxes by Bolivar County, do you?

A. No, sir. I only know by the records.

X Int. 3. The first record which you read from in your foregoing deposition, which you refer to as tax sale made on March 6th, 1882 for the delinquent taxes due thereon for the fiscal year 1881, is the record of the sales to the state certified by the sheriff and tax collector of Bolivar County to your office for the fiscal year 1881, is it not?

A. Yes sir, that is the record.

X Int. 4. And that reports merely the sales to the state for the delinquent taxes due the state and county for the year 1881, and has no reference to any prior taxes one way or the other has it?

A. That question I cannot answer. I don't know. I can only go as far as my records show. There may be some old books in the archives. There may and there may not be.

X Int. 5. In other words, there may have been other assessments of taxes of Sections 36 and 37, Township 21, Range 8 West, of which you have no knowledge from the foregoing record?

208 A. There may be.

X Int. 6. Now, Mr. Nall, in referring to the second record from which you read, known as Register of State Deeds in the Levee District, state whether or not it is supposed to be the record of all deeds, that is, the register of all deeds made by the Auditor of Public Accounts to lands purchased from the State by private individuals and which had prior to that time been forfeited to the state under taxes in the Levee District of the state.

A. Yes, it is supposed to contain it all.

X Int. 7. Have you any way of ascertaining when the entries were made in this Register of State Deeds above referred to?

A. Only what the records show.

X Int. 8. State whether or not the entries referring to all Section 36, Township 21, Range 8 West, appears to have been written in said book by the same handwriting or not?

A. I believe that the date of sale to the state, the date of purchase from the state and the name of the parties purchasing, and the description of the land is in one handwriting. The annotations in red ink are in another hand.

X Int. 9. State whether or not exactly the same condition applies to all of fractional Section 37, Township 21, Range 8 West?

A. It does, I believe.

X Int. 10. State, Mr. Nall, whether or not it is a fact that the entries in regard to all of Section 36, Township 21, Range 8 West, which refer to the date of sale to the state, date of purchase from the state, name of purchaser, description of land, number of acres, fees, taxes and total amount, does not appear in black ink on said register, and appear to be in the same handwriting?

A. It does.

X Int. 11. State whether or not that the notation "Land is in Arkansas," and "Cancelled November 23rd, 1892 and State tax and Int. refunded" does not appear to be in red ink, and whether these two entries in red ink do not appear to be in the same hand-

209 writing and in a different handwriting from the entries in black in- above referred to?

A. It does.

X Int. 12. State Mr. Nall, whether or not from the record as above indicated it appears that the entries in red ink were made subsequent to the entries in black ink?

A. I do not know. I cannot tell.

Redirect examination by COUNSEL FOR COMPLAINANTS:

Int. 1. In your cross-examination you have stated in substance that appearing on the record of State Deeds of the State of Missis-

sippi in regard to Sections 36 and 37, Township 21, Range 8 West, a certain portion of the entries, to-wit: that in black ink appears in one handwriting and the portion, to-wit, all of Section 36 and fractional Section 37 in Township 21, Range 8 West appears in red ink as follows: "Land is in Arkansas." The same appearing opposite each section and opposite all of section 36 is written in red ink the following: "Cancelled November 23rd, 1892 and State tax and Int. refunded," and opposite fractional Section 37 is the following in red ink "Cancelled November 23rd, 1892, and State Tax and Int. refunded." You state that these entries in regard to these lands which are in red ink are in a different handwriting from that in black ink. Now state in whose handwriting these red ink entries appear?

A. Of course, I don't know. I cannot tell.

Int. 2. State whether or not in your opinion it is in the handwriting of W. D. Holder, the then Deputy Auditor of Public Accounts under W. W. Stone, Auditor?

A. It resembles Col. Holder's handwriting.

Int. 3. Have you seen his handwriting often?

A. No, sir.

Int. 4. Col. W. D. Holder was the regular deputy in the office at that time—of W. W. Stone, Auditor?

210 A. Yes sir.

Int. 5. Is that one of the books you received under Act of the Legislature from the Auditor's office?

A. Yes sir.

Int. 6. At that date, November 23rd, 1892, that book was in the office of and under the custody of the Auditor of Public Accounts?

A. Yes sir.

Int. 7. You have stated in your cross-examination that as to the date when these sections 36 and 37, Township 21, Range 8 West first appeared on the records in your custody was for the taxes for 1882 for the fiscal year 1881?

A. For delinquent taxes due thereon for the fiscal year 1881.

Int. 8. And you have stated that they might have appeared on the records prior to that time. Now please examine these records in your office and state whether these lands prior appeared on your records back as far as 1862?

A. I have examined the books in this office from 1882 back to 1862, and can find nothing relative to these lands prior to loss for the fiscal year 1881.

Recross-examination by Mr. A. Y. SCOTT:

Int. 1. By your answer, Mr. Nall, to your last question you meant to say that you have examined the tax sales book to 1862, and do not find that the land has been sold to the state for taxes prior to 1882 for the fiscal year 1881.

A. Yes sir.

Int. 2. You do not mean to say that there is no other records of this office relative to that property do you?

A. No sir. If there are any other records I have no knowledge of them.

Int. 3. There are plats and field-notes relative to Section 36, Township 21, Range 8 West, which show that the property is in the State of Mississippi, is there not?

211 A. Yes sir.

Complainant excepts to the foregoing question and answer thereto as incompetent in this, that it calls for a mixed question of law and facts, and second because the records themselves are the best evidence.

Int. 4. If the taxes had been regularly paid upon Section 36, Township 21, Range 8 West, and upon all fractional Section 37, Township 21, Range 8 West prior to the sale of 1882 for the taxes of the fiscal year 1881, they would not have appeared on the records of your office?

A. No. Sometimes when the taxes are paid and the tax receipts are shown the lands are stricken from the records.

Int. 5. You mean to say by that statement that *that* sometimes where taxes are paid the sheriff in error sells some for taxes and reports them as delinquent to this office, and upon proof that the sheriff was in error in so reporting the land is then stricken from the roll.

A. Yes sir.

Redirect examination by D. E. MYERS:

Int. 1. Then as a matter of fact lands do not appear on the records in your office where the taxes have been paid and in error reported to your office and actually appeared upon your records and afterwards stricken from the records. Is that not so?

A. Yes, on proper evidence that the taxes have been paid.

Further dependent saith not.

E. H. NALL,
Land Commissioner.

Indorsed: Filed May 28, 1902. W. P. Feild, Clerk.

212 W. Q. COLE, a witness on behalf of Complainants, after being duly sworn, testified as follows:

Q. State your name, age, residence and occupation?

A. W. Q. Cole; 45 years of age; Jackson, Mississippi; Auditor of Public Acounts of the State of Mississippi.

Q. What official position do you hold at this time and how long have you so held it?

A. I am Auditor of Public Accounts of the State of Mississippi, and have been since the 15th of January, 1900.

Q. As Auditor of Public Accounts have you or not in your custody and under your control the books relating to the assessment, collection of taxes and redemption of taxes, and other papers relating to lands of the State of Mississippi in your office; If not, state what particular records you have in your office.

A. I have the assessment rolls of lands from 1883 to 1900. The records of redemption of lands were moved from my office to that

of Land Commissioner on the 6th of March, 1902, under an Act of the last Legislature.

Q. Have you not, or should you not have, in your custody the assessment rolls from the various counties in the State of Mississippi prior to 1883 running back for many years?

A. The records should be in this office from the organization of the State to date, but from lack of room the older records were several years ago stored in the old library above the Supreme Court room. In 1896, or about that time, the building was considered unsafe and the old records stored there, or many of them, were ordered by the Supreme Court and the Governor to rooms in the penitentiary. When they began to tear down the old penitentiary for the purpose of erecting the new capitol on that site, the records were moved to the lower hallway of the present capitol. Whether lost in moving or whether still in the lower hallway I am unable to say.

I have been unable to find all of the records. In fact, have
213 been unable to find but very few of the land records back of 1883.

Q. State whether you have the assessment roll of the County of Bolivar, Mississippi, for 1876.

A. I have.

Q. By the way just here tell us how these assessment rolls come into the possession of the Auditor of Public Accounts. Who sends them?

A. They are sent to the Auditor by the Chancery Clerks of the various counties after having been examined and approved by the Board of Supervisors.

Q. These purport to be correct assessments of all the rolls of each county and township?

A. Yes sir.

Q. Please examine the assessment roll for 1876 for Bolivar County, and state whether or not Island 76 appears thereon as assessed?

A. It does not. No record of Island 76 on it.

Q. State whether or not there is any record under the assessment roll of 1876 of Section 36 and fractional Section 37, Township 21, Range 8 West.

A. There is no record of such sections.

Q. After 1876 when was the next assessment roll sent in from Bolivar County?

A. That I am unable to say, as I don't know what other years the lands were assessed in that County.

Q. The assessments were usually every two or four years were they not?

A. Usually. Yes sir.

Q. Have you been able to find the assessment rolls subsequent to 1876, 1879, 1880 or 1881 of Bolivar County?

A. I have the assessment rolls for 1876, and the next in my possession is 1883. I have been unable to locate any for the intervening years.

Q. Are you still searching for the assessment rolls of Bolivar County subsequent to 1876 and prior to 1883?

214 A. I am having those in the lower hallway assorted for all counties.

Q. State under what assessment roll Island 76 in the Mississippi River, as far as the books in your possession show, was first assessed in Mississippi for taxation?

A. I find it assessed in 1883. Do not find it in 1876.

Q. Please examine the assessment roll for 1883, and give a verbatim copy of the assessment of Section 36 and fractional section 37, Township 21 North, Range 8 West.

A. "Owners name, State; division of Section, all 36, Township 21, Range 8 West; 824 acres; value per acre $1.00; total value of land held by State for taxes, $824.00."

"Owner's name, State; division of Section, all fractional section 37, Township 21, Range 8 West, 185 acres at $1.00, $185.00.

Q. When did the next assessment of land for taxes in Bolivar County, Mississippi, appear, the date?

A. 1887 is the next I have.

Q. Please give the verbatim assessment as it appears for 1887.

A. "For 1887, the State is again assessed with all of Section 36 and all of Section 37, Township 21 North, Range 8 West; acreage, the same."

Q. At what date was the next assessment roll of Bolivar County, Mississippi?

A. The next in my possession is 1889 on which the assessment appears exactly as it does in 1887, acreage and all.

Q. Have you another one?

A. Yes, sir, 1892, the one following 1889. "1892, Owner's name, Currie & Hull; all of Sections 36 and 37, Township 21, Range 8 West, 824 acres in Section 36 and 185 acres in Section 37."

Q. Have you any other assessments?

A. Yes sir, 1896. In 1896 the State is assessed with all of Sections 36 and 37, Township 21, Range 8 West.

Q. Please state from the records in your office what was done in regard to that property in the way of taxes for the year 1891
215 or 1892 with reference to refunding the purchase money to any one and to whom, as purchasers, all of Sections 36 and 37, Township 21 North, Range 8 West, and state all the facts in connection with it.

A. Disbursement Register for the year 1892 shows on page 247, warrant No. 4476, was drawn in favor of J. T. Currie and M. A. Hull for $58.20, and the voucher shows that it was the State's proportion of the purchase money refunded.

Q. Have you the original deeds in your custody made by the State of Mississippi to Currie & Hull?

A. Yes sir; they are filed as part of voucher No. 4476.

Q. Will you please file as "Exhibit A" to this your deposition a certified copy of that original deed as cancelled to Section 36, Township 21 North, Range 8 West, containing 824 acres, when the money was refunded together with all of the endorsements thereon?

A. I will file it herewith marked "Exhibit A."

Q. What section does this deed embrace?

A. Section 36.

Q. Will you please file certified copy with all the endorsements thereon of the other original deed from the State to Currie & Hull all fractional Section 37, Township 21 North, Range 8 West, 185 acres, as "Exhibit B."

A. I will file it herewith, marked "Exhibit B."

Q. Do these Exhibits A and B cover what is known as Island 76 in the Mississippi River?

A. That I do not know. I have no recor-s here that would give me that information.

Q. You have stated that you had the original voucher No. 4476 showing the refund of the purchase money to J. F. Currie & M. A. Hull, will you please file a certified copy of that original voucher and make it "Exhibit C" to your deposition?

A. I will file it herewith.

216 Q. Does anything appear on any of the assessment rolls in your office that you have referred to that Sections 26 and 27 Township 21 North, Range 8 West, was the Island 76 in the Mississippi River.

A. Nothing on the land assessments at all.

Q. Have you in your office an opinion by the Hon. Frank Johnston, the Attorney General of Mississippi, to the Hon. W. W. Stone, the Auditor of Public Accounts of the State of Mississippi bearing date of April 20th, 1894, in regard to the ownership of Sections 36 and fractional Section 37, Township 21 North, Range 8 West, being Island 76, as to the cancellation of the sale of said Sections and said Island 76 to Currie & Hull in 1891? If so, will you please file a certified copy of that opinion of the Attorney General to the Auditor, and mark it "Exhibit D" to your deposition?

A. I have a letter from Attorney General Johnston to W. W. Stone, Auditor, dated April 20th, 1894, a certified copy of which I file herewith as "Exhibit D."

Q. Said letter refers to said lands as Island 76, and the same bought by Currie & Hull?

A. Yes.

Q. State whether or not from the records in your office you can find whether the State of Mississippi has ever received prior to 1900 any taxes on Sections 36 and 37, Township 21 North, Ran*eg* 8 West, except those refunded for the erroneous sale in 1892, on November 23rd, to Currie & Hull?

A. Our records do not show any taxes collected.

Cross-examination by A. Y. Scott:

Q. Will you please file with your deposition a copy of the assessment of all section 36, Township 21, Range 8 West, in Bolivar County, and all of fractional Section 37, Township 21, Range 8 West in Bolivar County from every assessment roll in your possession from and including 1883 up to and including the assessment roll of 1900, marking same as "Exhibit E."

217 A. I will file it.

Q. In 1883, I believe, you stated, that the land appeared

assessed to the State continually from that time until the assessment of 1892, and subsequently from 1892 until 1900 it appears assessed to the State?

A. Yes in 1892, it was assessed to Currie & Hull and the other times to the State.

Q. So then the only years during that time upon which the State prior to 1900 should have received any taxes would have been for the year 1892?

A. Yes sir, and it would not have received taxes for 1892 if Currie & Hull had knowledge of failure of title prior to tax collection time, (as they evidently had by their refund being made in the early part of tax collecting time for 1892).

Q. You have filed with your deposition as "Exhibit D" thereto a certified copy of a letter of Frank Johnston, Attorney General, to W. W. Stone, Auditor of Public Accounts. Please state where the original of this opinion, being the instrument I now hand you, was obtained by you?

A. The first time I saw it, it was handed to me by Col. Myers this morning.

Q. State whether or not there is any notation on said opinion which would identify same as part of the record of your office?

A. No there is nothing.

Q. State whether or not the instruments filed as Exhibits A, B, and C. to your deposition are all the instruments in your office relative to the refund to Currie & Hull, excepting the notations on the Disbursement Register referred to in your deposition?

A. It is the only record that I have any knowledge of except the ledger and journal which contains a copy of what is shown on the Disbursement Register.

Q. Please file with your deposition as "Exhibit F" the jacket containing the Auditor's warrant and deeds filed as an exhibit to your deposition above.

A. I file same as "Exhibit F."

218 Redirect examination by D. E. Myers:

Q. On Exhibit C filed with your deposition I notice that disbursement was approved by J. M. Stone and T. M. Miller, what official positions did J. M. Stone and T. M. Miller respectively occupy at the date thereof?

A. J. M. Stone was Governor and T. M. Miller was Attorney General.

Q. In your cross-examination you have stated that nothing appears on "Exhibit D" to your deposition showing that it officially belonged to your office. Please examine said original again and state whether or not it is not addressed to the Hon. W. W. Stone, Auditor of Public Accounts.

A. I understood counsel that he meant any "notation" thereon showing that it was one of the records of the office. The letter is addressed to Hon. W. W. Stone, Auditor of Public Accounts.

—. ——.

A. Yes sir.

Q. Frank Johnstone was then Attorney General for the State of Mississippi.

A. Yes sir, I think so.

Q. State in whose handwriting from start to finish said original opinion is of date April 20th, 1894?

A. To the best of my knowledge and belief it is that of Attorney General Johnston.

Q. Are you not well acquainted with Gen. Johnston's handwriting?

A. Yes sir.

Q. Then being addressed by the Attorney General to the Auditor on official business would not it properly belong in the Auditor's office?

A. It should have been here, yes sir.

Q. Under the due course of business are you not satisfied that it was originally here?

A. Yes, I think it was originally here.

Q. You have stated that Mr. Myers handed you that original opinion to-day, if you recollect state in short what he said to you when he handed you this opinion?

219 A. When you handed it to me this morning you said that you had either received it from A. H. Stone, or one Mr. Murphy, and that it was a copy. Whereupon I remarked to you that I thought it was Capt. Johnston's handwriting.

Further deponent saith not.

(Signed) W. Q. COLE.

220 EXHIBIT "A" TO W. Q. COLE'S DEPOSITION.

THE STATE OF MISSISSIPPI:

This indenture, made and Entered into this the 28th day of September, A. D. 1891, between the State of Mississippi, of the first part, and J. T. Currie and M. A. Hull of the second part, witnesseth—

That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi, for Taxes due the State, the following tract of Land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All.....	26	21	8 W.	824

Situated in Bolivar County, containing Eight Hundred & Twenty-four Acres, more or less.

And whereas, the said party of the second part desires to purchase said tract of land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase the said land and paid the sum One Hundred & Fifty-four Dollars, and six Cents.

And in consideration of the premises, and the amount paid to the State of Mississippi, in accordance with the Statutes of the State,

the State of Mississippi has this day bargained, sold and conveyed, and by these presents does bargain, sell and convey unto the said party of the second part, their heirs and assigns forever, the aforesaid, *the aforesaid* tract of land as above described, to have and to hold the same to said party of the second part, their heirs and assigns forever. The State of Mississippi hereby warrants the title to said lands according to the Statute in such cases made and provided, and not otherwise.

221 In testimony whereof, these presents are signed, sealed and delivered, in the name of the State of Mississippi, by W. W. Stone, Auditor of Public Accounts, who has hereunto subscribed his name and affixed his seal of office, this the 28th day of September, A. D. 1891.

(Signed) W. W. STONE,
[SEAL.] *Auditor of Public Accounts.*

(Endorsements on Back.)

Date September 28th, 1891.
County Bolivar.
Purchaser, J. T. Currie, M. A. Hull.

Treasurer's Fee	$ .50
Auditor's Fee	.55
Commissions	13.95
Sheriff's Costs sale	1.00
Clerk's Fees	.10
State Tax Gen. Fund	24.22
State Tax School Fund	3.26
County Tax	110.48
Total	$154.06
	110.48
	43.58

Registered:

J. J. EVANS,
State Treasurer.

Land lies in Ark.
Cancelled Nov. 23rd, 1892, & State Tax and int. refunded.

W. W. STONE,
Auditor.

Filed for Record Nov. 2nd, 1891, at 1.40 o'clock P. M.

T. R. McGUIRE, *Clk.*,
R. J. McGUIRE, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, Clerk of the Chancery Court, in and for said County, do hereby certify that the foregoing instrument was filed

for record in my office, on the 2nd day of November, 1891, at 1 o'clock and 40 minutes, P. M., and the same has been this day truly recorded in Book XX, page 25.

Witness my hand and official seal, this the 2nd day of Nov. 1891.

T. R. McGUIRE, *Clerk.*
W. A. SHELBY, *D. C.*

222 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi hereby certify that the within writing and the endorsements thereon is a true and correct transcript from the official records of said State in my keeping, taken from the original Deed on file in my office.

Witness my signature the 12th day of May, 1902.

(Signed) W. Q. COLE,
[SEAL.] *Auditor.*

223 EXHIBIT "B" TO W. Q. COLE'S DEPOSITION.

THE STATE OF MISSISSIPPI:

This indenture, Made and Entered into this the 26th day of October, A. D. 1891, between the State of Mississippi, of the first part, and J. T. Currie & M. A. Hull of the second part, witnesseth—

That whereas, there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi, for Taxes due the State, the following tract of Land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All fract'l.....	37	21	8 W.	185

Situated in Bolivar County, containing One hundred & eighty-five Acres, more or less.

And whereas, the said party of the second part desires to purchase said tract of land under the provisions of the laws of Mississippi, in such cases provided, and has this day applied to purchase the said land paid the sum of Thirty-eight Dollars, and Seventy-two Cents.

And in consideration of the premises, and the amount paid to the State of Mississippi, in accordance with the Statutes of the State, the State of Mississippi has this day bargained, sold and conveyed, and by these presents does bargain, sell and convey unto the said parties of the second part, their heirs and assigns forever, the aforesaid tract of land as above described, to have and to hold the same to said parties of the second part, their heirs and assigns forever. The State of Mississippi hereby warrants the title to said lands according to the Statute in such cases made and provided, and not otherwise.

In testimony whereof, these presents are signed, sealed and delivered, in the name of the State of Mississippi, by W. W. Stone,

Auditor of Public Accounts, who has hereunto subscribed his
224 name and affixed his seal of office, this the 26th day of October, A. D. 1891.

(Signed) W. W. STONE,
[SEAL.] *Auditor of Public Accounts.*

(Endorsements on Back.)

Date October 26, 1891.
County, Bolivar.
Purchaser, J. T. Currie M. A. Hull.

Treasurer's Fee	$ .50
Auditor's Fees	.55
Commissions	1.70
Sheriff's Costs Sale	1.00
Clerk's Fees	.10
State Tax Gen. Fund	6.23
State Tax School Fund	.74
County Tax	27.90
Total	$38.72
	27.90
	10.82

Registered:

J. J. EVANS,
State Treasurer.

Land lies in Ark.
Cancelled Nov. 23rd, 1892 & State Tax & int. refunded.
W. W. STONE, *Auditor.*

Filed for Record Nov. 2nd, 1891, at 1:40 o'clock P. M.
T. R. McGUIRE, *Clk.*
R. J. McGUIRE, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, T. R. McGuire, Clerk of the Chancery Court in and for said County, do hereby certify that the foregoing instrument was filed for record in my office on the 2nd day of Nov. 1891, at 1 o'clock and 40 minutes P. M., and the same has been this day truly recorded in Book XX page 24.

Witness my hand and official seal, this 2nd day of Nov. 1891.

T. R. McGUIRE, *Clerk,*
W. A. SHELBY, *D. C.*

225 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi hereby certify that the within writing, and the endorsements

thereon is a true and correct transcript from the official records of said State in my keeping, taken from the original deed on file in my office.

Witness my signature this the 12th day of May, 1902.

(Signed) W. Q. COLE,
[SEAL.] *Auditor.*

226 (EXHIBIT "C" TO W. Q. COLE'S DEPOSITION.)

The State of Mississippi, to J. F. Currie & M. A. Hull, Bolivar County, Dr.:

For Amount due him on account of the following described lands improperly sold by State on the 28th day of Sept. 1891 & Oct. 26th, 1891, as per voucher herewith filed, and deed this day cancelled for the following reason to-wit:

(Sold to State 6th day of March, 1882)

The land hereafter described was at date of erroneous assessment and sale to the State within the limits and the property of the State of Ark.

Approved:

J. M. STONE, *Governor,*
T. M. MILLER,
Att'y Gen'l.

Description.	S.	T.	R.	Acres.	Price.	Int.	Total.
No. 1 deed All.....	36	21	8 W.	824	43.58	3.80	58.20
" 2 " All fract'l.	37	21	8 W.	185	10.42		

Received Auditor's Warrant No. 4476 for $58.20 Dollars, in full of above claim.

Send Warrant to —— —— Mississippi.

J. T. CURRIE &
N. A. HULL,
By A. H. STONE.

Jackson, Miss. Nov. 23, 1892.
See Sec. 76, Acts 1900, page 89.

Sign above receipt (without detaching same from statement of account) and return to this office, when warrant will be issued and forwarded as you may direct.

(Signed) W. W. STONE,
Auditor Public Accounts.

—— — 189–.

227 (Endorsements on Back:) Bolivar County Currie & Hull. State $58.20.

STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts for the State of Mississippi do hereby certify that the within writing, and the endorse-

ments thereon is a true and correct copy from the original voucher now on file in this office.

Witness my signature this the 12th day of May, 1902.

(Signed) W. Q. COLE, *Auditor.*

228 (EXHIBIT "D" TO W. Q. COLE'S DEPOSITION.)

Office of Attorney General, Jackson, Miss.

APRIL 20TH, 1894.

Hon. W. W. Stone, Auditor of Public Accounts,

DEAR SIR: At your request I have examined the question whether Island No. 76 in the Mississippi River, opposite Bolivar County, belongs to the State of Mississippi, or the State of Arkansas.

The exact point upon which the inquiry turns is upon the fact as to whether the middle of the main channel was West of the Island in 1817, the date of the Admission of Mississippi into the union. If the island lay on the East of that channel in 1817 then it belongs to Mississippi.

After exhausting all sources of information open to me in the Department of the Interior at Washington, I am unable to get the exact data necessary to a definite decision of the question. There are no maps or surveys of the River made at that or since time showing the location of the Island in 1817.

I enclose a copy of a letter written by Hon. John Wilson Comm'r of the General Land office to Hon. Jacob Thompson of date Feb'y 28th, 1855, showing that the ownership of the Island has been claimed by each State. It was included in general surveys from each State approved by the Department at Washington.

It appears, however, that the entire Island (Except about 51 acres) was sold and patented to individuals in 1847 by the U. S. Government through the U. S. Land Office at Little Rock, Arkansas.

I am further informed that the lands embraced in this Island are not upon the books of the U. S. Land office at Jackson and have never been sold or dealt with at this latter office.

Mr. Wilson expressed the opinion in his letter to Mr. Thompson that the Island belong- rightfully to Mississippi, but qualifies
229 this expression by saying that if the thread of the Main Channel could be shown to have been to the West of the Island in 1817 then the ownership would be in Mississippi.

He does not allude to the fact that the lands had been sold by the U. S. Government in 1847 through the U. S. Land Office at Little Rock.

This fact is not conclusive, but it is the only evidence that I can gather which tends to solve the doubt. It tends strongly to show that the U. S. Government regarded the Island at that time in the State of Arkansas.

Again the owners of these lands have been for many years paying taxes to the State of Arkansas and refusing to pay taxes to the State of Mississippi.

In 1882 these lands were sold at tax sale to the State of Mississippi, and in 1891 the State sold the same to Currie and Hull.

In 1892 the conveyances to Currie & Hull were cancelled and money refunded to them by the Auditor on the advice of Hon. T. M. Miller then Attorney General of the State and upon the approval of the Governor, upon the ground of an erroneous assessment, the island being *"within the limits and the property of the State of Arkansas."*

I perceive no reason for disturbing this ruling and decision of your office.

And as it has been sold to the State again for taxes and is now on the list in your office, I think it proper for you to adhere to the former ruling and strike it from the list of State lands in your office.

I enclose the following documents to be filed with this communication, viz.:

(1) Letter of Hon. John Wilson Land Com'r, Feb. 28th, 1855.

(2) Letter of Edward A. Bowers, Assistant Land Com'r, April 6th, 1894.

(3) Certificate showing entries of land at the U. S. Land Office at Little Rock.

Very Truly Your Ob't Serv't,

FRANK JOHNSTON,
Attorney General.

230 I certify that the foregoing 6 pages *is* a true and correct copy of the official opinion of the attorney general of the State of Mississippi in the matter therein referred to as shown by the records in this office, Opinion Book from July 22nd, 1893, to June 22nd, 1894, pp. 371, 376 inclusive. This May 12th, 1902.

(Signed) MONROE McCLURG,
Attorney General of the State of Mississippi.

See Code 1892 # # 182 & 183.
This office has no official seal.

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, do hereby certify that the above and foregoing 3 pages *is* a true and correct copy of the original now on file in this office.

Given under my hand and official seal this May 12th, 1902.

(Signed) W. Q. COLE,
Auditor Public Accounts.

Owner's name.	Assessment of lands in the county of Bolivar for the years indicated below, with amount of State tax due thereon, to-wit: Division of section.	Section.	Township.	Range.	East or west.	Number acres of uncleared land.	Value per acre of uncleared land.	Total value of uncleared land.	Total value of both cleared and uncleared land.	Number acres of State land.	Value per acre of State land.	Total value of State land.	Amount of State tax on land and improvements at mills on valuation.	Number acres sc-ool land (not taxable).
	For the year 1883:										$ cts.			
State	All	36	21	8						824	1.00	824.00	2.06	
"	All Fract'l	37	21	"						185	1.00	185.00	.47	
	For the year 1887:													
State	All	36	21	8						824	1.00	824.00	2.87	
"	All	37	21	8						185	1.00	185.00	.65	
	Class No. 1 for the year 1889:													
State of Miss	All	36	21	8	W					824	1.00	824.00	3.30	
" " "	All	37	21	8	W					185	1.00	185.00	.74	
	For the year 1892:													
Curry & Hull	All	36	21	8		824	.50	412.00					2.06	
" " "	All	37	21	8		185	.50	92.50					.41	
	For the year 1896, State tax at 6 m'ls:													
State	All	36	21	8	W					824		412.00	Outside Levee.	824 A.
	All	37	21	8	"					185		92.50	" "	185 A.
	For the year 1900, State tax at 6 m'ls:										No. of acres of levee land.			
N. A. Yerger	Lot 1 & N. ½ Lot 2	36	21	8	W	160		80.00	80.00		160		.48	
E. H. Woods	Lot 3 & S. ½ Lot 2	36	21	8	"	160		80.00	80.00		160		.48	
Elizabeth S. Woods	Lot 4 & N. ½ Lot 5	36	"	"	"	160		80.00	80.00		160		.48	
M. Y. Scott	" 6 & S. ½ " 5	36	"	"	"	160		80.00	80.00		160		.48	
E. M. Scott	" 7 & N. ½ " 8	36	"	"	"	160		80.00	80.00		160		.48	
W. H. Fitzgerald	S. ½ " 8	36	"	"	"	112		56.00	56.00		112		.34	
" " "	" 2	37	"	"	"	160		80.00	80.00		160		.48	
N. Y. Scott	" 1 & 2	37	"	"	"	160		80.00	80.00		160		.48	

232 STATE OF MISSISSIPPI, *Hinds County:*

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, and having in my official keeping as such the Land Assessment rolls of Bolivar County, State of Mississippi, do hereby certify that the above and foregoing contains a true and correct transcript of the records of Land Assessments in Bolivar County, for each of the years 1883, 1887, 1889, 1892, 1896 and 1900, so far as the same pertains to Sections 36 and 37, Township 21, Range 8 West.

Given under my hand and official seal, this 12th day of May, A. D., 1902.

____ ____,

[SEAL.] *Auditor of Public Accounts.*

233 (EXHIBIT "F" to W. Q. COLE'S DEPOSITION.)

No. 4476. For $58.20.

J. F. Currie & M. A. Hull.

Erroneous Land Sales Fund.

Sec. 3831, Code 1892.

Nov. 23, 1892.

Disposition of Warrant.

A. H. Stone.

Bolivar.

I, W. Q. Cole, Auditor of Public Accounts of the State of Mississippi, do hereby certify that this instrument is a true and correct copy of the jacket or wrapper to voucher No. 4476 on file in my office.

Given under my hand and official seal this the 13th day of May, 1902.

[SEAL.] W. Q. COLE, *Auditor.*

J. P. 311.

234 T. M. HENRY on oath being first duly sworn deposes as follows:

Direct examination by D. E. MYERS:

Int. 1. State your name, age, residence and occupation.

A. T. M. Henry; 45 years; Jackson, Mississippi; Deputy Auditor of Public Accounts of the State of Mississippi.

Int. 2. What official position did you hold in the year 1892, particularly in November 1892?

A. I was the Revenue and Warrant Clerk. W. W. Stone being the Auditor of Public Accounts.

Int. 3. Who was the Deputy Auditor of Public Accounts in 1892, November 23rd, 1892?

A. Col. W. D. Holder.

Int. 4. Were you in the same office with him?

A. I was.

Int. 5. Were you acquainted with his handwriting?

A. Yes sir.

Int. 6. Have you seen him write?

A. Frequently, every day nearly.

Int. 7. Please examine the Register of State Deeds for the Levee Districts on page 17, under date November 23rd, 1892, and opposite the entry of all of Section 36 and fractional Section 37, Township 21, Range 8 West, and state in whose handwriting the following words are in red ink, "Land is in Arkansas" "Land is in Arkansas?" And also the following entries in red ink, to-wit, "Cancelled November 23rd, 1892, the State tax and Int. refunded," and also the following in red ink "Cancelled, November 23rd, 1892, and State tax and Int. refunded," and state in whose handwriting these entries in red ink are on the book?

A. To the best of my knowledge and belief in the handwriting of Col. W. D. Holder.

Int. 8. What official position did Col. W. D. Holder occupy at that time?

A. Deputy Auditor of Public Accounts.

Int. 9. Who was the Auditor at that time?

235 A. W. W. Stone.

Int. 10. State whether or not Col. W. D. Holder is dead or alive. If dead about what time did he die?

A. Col. Holder is dead. He died in 1900.

Cross-examination by A. Y. SCOTT:

X Int. 1. When do these entries in red ink appear to be made?

A. They appear to have been made November 23rd, 1892.

X Int. 2. How long was Col. Holder Deputy Auditor, from what date and to what date?

A. I could not be exact as to the months. From 1886 to January 1896. During the entire term of Capt. Stone's administration—about ten years.

Further deponent saith not.

T. M. HENRY.

Indorsed: Filed May 28, 1902. W. P. Feild, Clerk.

236 R. J. MATHEWS, a witness on behalf of the complainants, being called, and after being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded his as follows, to-wit:

Direct examination by D. E. MYERS:

Int. 1. State your name, age, occupation and place of residence.

A. A. J. Mathews, age 68, coal dealer and livery business, Rosedale, Mississippi.

Int. 2. Are you acquainted with Island 76 in controversy in this suit?

A. Yes, I went on it a few times.

Int. 3. State whether or not you ever looked after that property as the representative or agent of any one? If so, for whom?

A. Well I looked after it; I went on it once; I was going up another time, I did not get on it; I went to Benoit, and out to the landing there at Bolivar, but I found out what I wanted and did not go on. I went there at the instruction of Judge James Murphy. He wrote me that the island belonged to Mrs. Sallie Murphy. He wanted me to go down there and see about parties cutting posts off of it—mulberry posts.

Int. 4. Who was Mrs. Sallie Murphy?

WITNESS: Who was she?

Mr. MYERS: Yes.

A. She was the wife of Judge James Murphy.

Int. 5. About what time was that,—the years?

A. Well I can't be positive about the years, but it was before Judge Murphy's death, a year or so, but I do not know exactly; it was somewhere in the nineties. I think it was just before I moved over here, it was '90 or '91. He wrote me about noticing the place for him, and I stopped there on the way to Arkansas City in a boat or skiff. The next time he wrote me about the posts and I went from here down to Benoit and I walked out to Bolivar; did not go on down; I found out all I wanted without going there; they had been cutting posts on it.

Int. 6. Was there anybody living on the Island?

237 A. Not that I know of unless it was some fishermen.

Int. 7. Where were you living at that time, and how long did you reside there?

A. The first trip I made I lived in Arkansas in Desha County, right opposite here; that was the first trip I made; the second time I was living here.

Int. 8. What year did you move to Rosedale?

A. I think it was in 1892, if I am not mistaken. The year I moved here is the year I got the last letter about it; the time he asked me to go and see about the posts. I got on the train and went down to Benoit.

Int. 9. When did you first know the Island and where the main channel of the Mississippi was?

A. The first I remember anything about it was in 1857. The reason I know that year is because I went down the river in a produce boat we were coasting down.

Int. 10. What side of the island was the main channel of the river at that time?

A. On the Mississippi side; the left going down; we went to the left.

Int. 11. Well did you have any further experience or observation of that channel and island after 1857, up to 1861 or '62? If so state what it was?

A. Not until about after '60. After '60 and up until say probably 1861 I was up and down the river when the Federals took Island 10.

I was running on a small mail packet from Memphis to Vicksburg, and was up and down the river until it was closed by the Federals.

Int. 12. Where was the main channel of the river then?

A. We most always went to the left of the Island; sometimes the other way.

Int. 13. How was it when the river was low?

A. My recollection is that when the water was low we went around the point.

Int. 14. Where did the point run?

238 A. Next to the Mississippi shore.

Cross-examination by A. Y. SCOTT:

Cross-examination waived.

R. J. MATHEWS.

When I was running on the Str. Victoria in 1860 she was a mail boat and we usually went to left of — on account of mud lands behind island—later when on through boat went mostly to the right of island. This is what I thought I said and intended to say in above.

R. J. MATHEWS.

Indorsed: Opened & published January 31st, 1903. W. P. Feild, Clerk.

239 C. W. ORTON, witness for the Complainants.

(By COMPLAINANT:)

Int. 1, in chief. State your name, age, residence and occupation.

Ans. # 1. My name is Clark W. Orton, age 28 years, residence, Ortons Ranch, Freemont Co., Idaho. Occupation, Rancher and Civil Engineer.

Int. 2, in chief. Are you acquainted with the parties to this suit, if not all of them, which ones do you know?

Ans. # 2. I am personally acquainted with Mr. C. Moore.

Int. 3, in chief. Where did you reside during the winter of 1898 and 1899, and particularly from about January 1st, 1899 to September or October, 1899, and what was your business?

Int. 4, in chief. If in answer to interrogatory 3, *supra*, you state that during the winter of 1898 and 1899, and particularly from January 1st, 1899 until September or October 1899, you resided on Island 76 in the Mississippi River; state whether or not during that time you were employed by Moore & McFerren, or Claude H. Moore, their agent and manager, to look after and take care of said island, and their property thereon, while they were logging on Arkansas River, or elsewhere, and give the dates as near as you can, to-wit:—when you began to look after the island, and the date when you ceased to do so.

Ans. # 3 & # 4. I resided on Island 76. I was studying forestry & means of handling & uses & values of timber. From the last of May 1899 to about the first of Sept. 1899 I was in the employ of

Moore and McFerren of Memphis, Tenn. I was hired to look after their timber on Island 76 by their agent Claude Moore.

Int. 5, in chief. State whether or not O. L. Sanders was on the island from the fall of 1898, until about January or February 1899, cutting, hauling and shipping logs therefrom for Moore & McFerren, and if you know when Mr. Sanders left the island and went to the Arkansas River in January or February, 1899. Please give the date.

240 Ans. #5. To the best of my recollection I severed my connection with the Outzen Levee Construction Co., the last of Dec. The date they left Eutaw, Miss. I reached Island 76 between Jan. 5 to 10th. Mr. Sanders had then left the island for his contract on Arkansas River and had gone when I reached there, but if I remembered correctly, the cook, a man by the name of Perry, was there with a part of their plunder.

Int. 6, in chief. Please state whether or not Moore & McFerren paid you for your services in taking care of the island and property thereon, for them, during the absence of Mr. Sanders therefrom if yea, state how much.

Int. 7, in chief. Please examine the check here handed you dated 12/19-1899 for $25.00 payable to your order, and state whether or not you indorsed same and collected the money thereon, and state whether or not that was in payment for your services in taking charge of the island for Moore & McFerren from about January 1899, until September or October 1889, and please attach hereto said check and mark it Exhibit "A" to your deposition, same also being Exhibit "D" to the deposition of Claude H. Moore in this cause.

Ans. # 6 and # 7. Moore & McFerren paid me for my services in taking care of island 76 & property thereon.

The inclosed check marked Exhibit A for the sum of $25.00 was received & indorsed by me. I also rec'd that amount in cash upon indorsing & cashing check which was in payment of my services to Moore & McFerren.

Int. 8, in chief. State anything else you may know going to show the possession of Moore & McFerren of the Island 76 from about September 1898 to September 1899.

Int. 9, in chief. Please examine also the following letters here handed you purporting to have been written by you on dates Bolivar, Miss. dated Nov. 27th, 1899, addressed to Mr. C. Moore, (Exhibit B to C. H. Moore's deposition herein & the other dated

241 Bolivar, Miss., dated Dec. 16, 1899—addressed to Mr. Moore, Memphis, Tenn. both letters signed by you, whether or not those letters were written & signed by you—and what was the occasion for writing them, & whether the check Ex. "A." was sent you in pursuance thereto. Please make said two letters exhibits B & B2 respectively, or copies of them.

Ans. # 8. The letters marked Exhibit B & Exhibit B2, are true copies of letters written to Moore & McFerren by C. W. Orton.

Witness stated in answer to Cross-interrogatories propounded by attorneys for Defendants.

X Int. 1. If in answer to Interrogatory No. 3, in chief, you should state you were in the employ of the United States Government, state in what capacity you were employed.

Ans. # 1. I have not, or had not been, in the employ of U. S. G'v't for some time past.

X Int. 2. State when said employment was begun and when ended, giving dates.

X Int. 3. State whether or no- said appointment was in writing and if so by whom was it signed.

X Int. 4. What salary did you draw.

X Int. 5. If in answer to X Int. 3, you should state that said appointment was in writing then file same with your deposition as exhibit thereto.

Ans #2, 3, 4, & 5. Answered by above questions and answers.

X Int. 6. State when you were employed by Moore & McFerren, and in what capacity you were to act. Give the date when said employment begun and the exact date when said employment ended.

X Int. 7. State by whom you were employed and state where you were at the time you were so employed, and who was present at the time.

Ans. # 6 & 7. I cannot remember the exact dates at this time, but I think it was the last of May 1899. The Steamer Kate
242 Adams landed at Island 76. Mr. Claude Moore ran down and hurriedly asked me a few questions and told me to watch the timber, or his interests until Saunders came and he would pay me for it. The boat only landed a moment and we had only a limited conversation. I thought little of it until Mr. Jones arrived when I immediately took steps to protect Moore & McFerren's interests, by informing their agent at Arkansas City, and posting the island against trespassers.

C. W. ORTON being examined on Additional interrogatories and cross-interrogatories testifies as follows:—

By COMPLAINANT:

Int. 1st. Mr. C. L. Jones, in his deposition in this case, in connection with his taking possession of Island 76 in 1899, and his attempt to keep all trespassers off the same, says:

"Yes sir. The Kate Adams landed one night with a logging out-
"fit and some men; myself and the crew that was there—Orton,
"Dad Wilson. Palmer Wilson and a little negro I had with me,
"went down to the boat armed. Going down there, the crowd told
"me they were with me. and if I did not want them to get off. why
"we would keep them back. They each took their stand; old man
"Wilson, Palmer Wilson. Orton and the negro boy took their stand
"in the edge of the thicket with their guns, and told me to stop
"the first man, and they would get the balance, and to start the
"ball rolling, and that they would see that nobody else got off, and
"in that way I kept them from unloading their plunder and their
"wagons."

As stated by Mr. C. L. Jones. it was Mr. Saunders and his logging

outfit you were trying to keep from landing on the Island—please state whether or not the above statements by Mr. Jones are true.

Int. 2nd. Mr. C. L. Jones, in answer to his interrogatory 25th, of his deposition, stated:—

243 "Mr. Orton did on several occasions, come to my tent and "wake me up during the night—when he thought a boat "would land, he would go with me to the river—get his shot-" gun and come out with me. On one occasion the Hill City pulled " in and tied up on account of darkness; he got his shotgun and " went down with me that night, and told me to go down to the edge " of the boat to see who was going to get off, and said he thought " they would up around in above us and get off before we could see " them."

Please state whether or not the foregoing statement is true.

Int. 3rd. Mr. C. L. Jones further testified that when he first went on the island, somewhere between the 10th and 15th of August, 1899, that you were there and assisted him to post notices to warn off all trespassers, and that you never told him you were in charge of the Island for Moore and McFerrin until a week or two after he had taken possession of the Island, and after you had gone down to work for Mr. Saunders after he had arrived on the Island and commenced cutting saw logs for Moore and McFerrin; now please state whether that is true or not, and whether or not, when he first came to the Island, you informed him you were there in charge by Moore and McFerrin?

Int. 4th. Anderson Hence, a colored man, in his deposition in this cause, has testified in regard to his relations with your business and otherwise, in answer to Int. 9th, as follows:

" Mr. Orton—him and I was working together. I helped him " carry some timber down to Arkansas City, and we was a little short " of money and he was talking about it—kind of a business matter—" and he said he did not have any money, and that Mr. Saunders " owed him some and would not pay him because he would not say " he was in charge of the Island—something of that kind."

Now please state whether or not you ever told Anderson Hence any such thing as stated by him in the above answer.

Int. 10th, propounded to Anderson Hence and his answer thereto are as follows:

244 " Int. 10th. I gather from what you state, that the trouble " was that Mr. Orton was unwilling to testify in this law " suit that had been brought about the Island—that he had posses-" sion of the island for them, is this correct?

" Ans. Yes. That was what he said, and he said he would not " do that because it was not so."

Now Mr. Orton, please state whether or not you made this last statement to Anderson Hence, or if you ever stated to him that you were not in possession of the island for Moore and McFerrin, or that you would not testify to that fact because such was not the case?

Int. 6th. State anything else you know relative to the fact of your connection with the island and holding it for Moore and McFerrin during the absence of Mr. Saunders up the Arkansas River,

and which you have not heretofore stated in answer to the original interrogatories herein.

Ans. In answer and reply to Mr. C. L. Jones' testimony I wish to make and swear to the following: I was at the landing of the Steamer Kate Adams at the time Mr. Saunders' outfit tried to land. I was unarmed, as was Dad Wilson, and I believe Palmer Wilson. I did not tell Jones that "I was with him," or did Dad Wilson, and I did not hear Palmer Wilson do so. In no way by word or action did I aid or encourage the action of Mr. Jones, and I did not make any of the statements attributed to me by him. I did not wake him up in the night stating the boat would land above, etc., or to the incident of the Hill City it cannot in any way be attributed to, or connected with the possession of Island 76. It was in the evening, and the Pilot of the Hill City was trying to head up the wrong channel, and would get stuck, back off, run on and get stuck again. We were out on the river bank and started "guyey" him, (the pilot). He got mad and answered us which made us all the worse. He backed off and headed for our camp and made his landing. We thought they were going to make trouble and all of us went for our
245 guns. It can in no way be attributed to the possession of Island 76. I was there when Mr. Johns landed, which was wholly unlooked for by me. I had received no instructions as to how to act in a case of that kind. I was told that Mr. Johns was a "bad man," and had killed three or four men, etc. Mr. Johns asked for somebody to help him post the island, I did not offer him any help, nor did I help him. I asked him what a legal post in that state consisted of and he replied 12 posters. I got a copy of one of his posters and copied it. I then, unknown to him wrote twelve posters and signed Moore and McFerrens name and put them up that day. Mr. Johns had 14 posters. He never posted them on the island to my knowledge. The posters laid around camp for a long time. I built a fire with 6 of them one morning as they were mixed with some waste paper. I wished no trouble with Mr. Johns as he was quick tempered and at that time I did not know the position or stand Moore & McFerren would take. I did not tell Mr. Johns that I represented Moore & McFerren until three or four days had passed then I told him, but long before Mr. Saunders reached the island.

As to statement of Anderson Hence, he was working for me. I had him hired with two or three other darkies, to float some timber to Arkansas City, when we reached there I paid them off. I might have told Hence that I was "hard up" and "short of money" as he wished to borrow money from me He owes me borrowed money today. I say I *might* have done that. I do not remember doing so. I never made any statements as he attributes to me in Int. 4th, and Int. 10th.

Indorsed: Filed Oct. 25, 1902. W. P. Feild, Clerk.

246 EXHIBIT "D" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "A" TO C. W. ORTON'S DEPOSITION.

No. 12038.

Moore and McFerrin, Saw Mill and Box Factory.

MEMPHIS, TENN. 12/19 1899.

Pay to the order of C. W. Orton $25.00 Twenty-five Dollars.
To the First National Bank Memphis, Tenn.

MOORE & McFERRIN,
Per C. H. MOORE.

Endorsed: C. W. Orton. Pay to the order of Valley Bank. E. W White. Pay to the order of any Bank or Banker All endorsements guaranteed. Valley Bank, W. B. Robets, Cashier. The National Bank of Commerce. Paid per F. S. Omberg.

247 EXHIBIT "B" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "B" TO C. W. ORTON'S DEPOSITION.

BOLIVAR, MISS., *Nov. 27th*, 1899.

Mr. C. Moore, Memphis, Tenn.

DEAR SIR: Last May when "Steamer Kate Adams" stopped at Island 76, you were on the boat and asked me a number of questions in regard to the Island. Just before she left you told me to watch the timber on the Island and that you would pay me for it, and that if it was bothered, to report this fact to Bondelli Mill, Ark. City.

When Mr. Sanders came to the Island, or I believe that it was Sept. 3rd or 4th, he told me that he had heard from you and that you had instructed him to pay me off, and asked me how much it was. I told him that it would be $10.00 per month, which he said was all right, and he did not have the money with him then, but that he was going to Memphis, and when he came back he would bring it.

Mr. Sanders has been to Memphis a number of times, but has never paid me the money. I have spoke to him about the matter. The last time he said that you would settle the matter with me.

It has been over two months since the money due (Sept. 4th) and I used it. I wish that you would send me a check for the amount, or if you prefer to Mr. Sanders, with instruction to give to me upon receipt of same, not to wait until pay day.

I am with Mr. Sanders on Island 76. I expect to be here for two weeks, then I will be in the Ark. River, as yet I do not know where but will keep my whereabouts known to you, and if I can be of any service to you in your case, I will cheerfully give you any information in my power. If at any time you should wish to use me and do

not know where I was, a letter addressed to Ortonville, Minn., will reach me, or the P. M. of that town will give you my address.

Very respectfully, C. W. ORTON.

248 EXHIBIT "B²" TO C. H. MOORE'S DEPOSITION.

EXHIBIT "B²" TO C. W. ORTON'S DEPOSITION.

BOLIVAR, MISS., *Dec. 16th*, 1899.

Mr. Moore, Memphis, Tenn.

DEAR SIR: I wrote you on Nov. 27th in regard to my pay for watching timber on Island 76. You have not answered my letter. I wish that you would send me the money by return mail at Bolivar, Miss. You have not treated me right in this matter, and unless you do so at once, I shall feel justified in starting proceedings at Arkansas City, against you on the timber. Please reply at once, the amount is thirty dollars.

Respectfully, C. W. ORTON.

249 X. J. PINDALL being duly sworn deposes and says:

Int. 1. Please state your name, age, residence, occupation and profession?

A. Name, X. J. Pindall, age 60; residence Dumas, Desha County, Ark., occupation lawyer.

Int. 2. The controversy in this case is as to the title and ownership of what is known as Island 76 in the Mississippi River, it being the same property described in the general warranty deed made by Mrs. Sallie A. Murphy to Moore & McFerren, bearing date of Aug. 28th, 1898, and of record in the Register's Office of Desha County, Arkansas, at Arkansas City, in Record Book No. 11, pages 293 and 294; now please state whether or not you are acquainted with said Island 76, and the conditions of the River at that point, and how long you have known said Island.

A. I have known something of Island 76 referred to in int. since 1862.

Int. 3. Please state whether or not you are acquainted with the channel of the river, that is to say on which side of the island,—the Arkansas side or the Mississippi side—the main channel, or thread, of the river was when you first knew it, giving the date when you first knew it and your opportunities for knowing.

A. From 1862 until 1875 and after the main channel of the Mississippi River was on the East or the Mississippi side of Island 76. In 1862 General M. M. Parsons crossed his command over the Miss. River at a point just below Island 76. I was serving on General Parsons' staff at the time, we camped while on the east side at Lake Bolivar, and after crossing the river we camped about the mouth of Cypress Creek. During the time we were fixing to cross the Mississippi river and crossing the same, it was necessary to keep a watch out for the enemies' forts up and down the river, and at the stage of

the river at that time the boats would follow the channel and it be-
come part of my duty to ascertain where that channel was be-
250 tween Bolivar and above that we might watch the approach of
boats and the direction and distance they would be from us,
and I found the channel at that time as stated, on the east side of the island.

Int. 4. State whether or not you ever resided at Napoleon, Arkansas; if so, during what years, and how far Island 76 was and is below Napoleon, and your means and opportunities for knowing where the channel of the Mississippi River was at that time, and subsequently.

A. I lived at Napoleon, Ark., from the 1st of Jan. 1866, to 1875. Island 76 was some 10 or 12 miles from there by land. During that time I was interested as attorney in litigation in matters affecting property on the island, and also during that time my firm purchased an interest in some lands upon the island. I think it was at a tax sale we purchased them, and I passed up and down the river by said island on the steam boats frequently, and at said time I was also frequently at Neblet's Landing on the Miss. side opposite, or about the upper end of the island.

Int. 5. If you should state that at the time you first knew Island 76, the channel of the river was east of the island, or on the Mississippi side, and that there has been a change in that channel since that time, please state whether or not that change occurred rather suddenly about the time of the cut-off which carried away the side of old Napoleon, just above it, giving the year as near as you can.

A. As to what caused the change of the channel would be only an opinion. I should think though that the cut-off at Napoleon caused it ultimately, and think the channel was changed from one side of the island to the other without affecting the island materially.

Int. 6. How long have you resided in Desha County, Arkansas, near said Island 76, and did you or not have occasion to frequently pass by it during the period of years you are testifying about?

A. I have resided in Desha County since 1866. As a mat-
251 ter of common history the channel was changed from the east
to the west side of the island sometime in the early 80's.

Int. 7. Please state anything else that you may know that shows, or tends to show, that originally, or within the date of your knowledge, the main channel was on the Mississippi side of Island 76, and that the chute on the Arkansas side of said Island was only navigable in high water. Also, in this connection, state anything you know in regard to the State of Arkansas having obtained jurisdiction over this Island ever since you knew it.

—. ——.

X. J. PINDALL.

Indorsed: Opened & published by rule of Court, June 5th, 1903. W. P. Feild, Clerk.

252 GEORGE MALONE, a witness on behalf of the Complainant-being first duly sworn deposes and says:—

Direct examination by D. E. MYERS:

Q. 1. State your name, age, residence and occupation?
A. George Malone, No. 8 Jefferson Street, Memphis, Tenn., 69 years old, river business, pilot and captain.
Q. 2. How long have you been engaged as Captain and Pilot on Mississippi River, as low down upon the river as Island No. 76?
A. Since the first part of the '50's, about '52.
Q. 3. Do you know where island 76 is?
A. Yes, sir.
Q. 4. How long have you known Island 76?
A. I remember island #76 first when I was a boy about 1842.
Q. 5. In what capacity did you go down the river in 1840?
A. As passenger.
Q. 6. As passenger?
A. Yes, sir.
Q. 7. What year did you begin to pilot or be a captain and what kind and name of the boat?
A. My first experience was as pilot on a flat boat 'long about '48 or '50.
Q. 8. Was about '48 and '50 your first experience there?
A. Yes, sir.
Q. 9. Where was the main channel or thread of the stream then?
A. Going down stream it was on the left.
Q. 10. And coming up stream?
A. Coming up stream on the right.
Q. 11. How many years were you flat-boating past that point?
A. About two years.
Q. 12. When did you first know the island, when did you as captain of a steam boat?
A. About '53.
Q. 13. What boat were you on?
253 A. The Falcon.
Q. 14. In what capacity?
A. As captain.
Q. 15. How long did you run as pilot on the Falcon; where did she run to and from?
A. From Memphis to New Orleans. I was running on her as barkeeper while she was in the mail trade.
Q. 16. I am speaking of the time *to* run as pilot or captain?
A. I was taken on as pilot down to New Orleans and come back as passenger on the same boat.
Q. 17. While on that trip to New Orleans in 1852 or '3 on the Falcon was the channel of the Mississippi River on the East or West side.
A. On the East side.
Q. 18. Well now state what other boat you run as pilot after 1853 and give the dates?

A. I was on the George W. Cheek running from Memphis to Arkansas City, Ark.

Q. 19. Where was the channel during the time you run on the Geo. W. Cheek?

A. It was to the left side or the Mississippi side.

Q. 20. How often did you pass that island while on the Geo. W. Cheek?

A. We made two trips a week, and passed there four times each week.

Q. 21. What next boat did you run on?

A. Well the next one was the A. J. White from Memphis to Arkansas City.

Q. 22. How long did you run on the A. J. White?

A. About a couple or three years.

Q. 23. About what years.

A. I should say 1873, '4 and '5.

Q. 24. During those years where was the main channel or stream of the Mississippi River as to island 76?

A. Down to the left of the island on the Mississippi side.

Q. 25. And in what capacity did you run the A. J. White?

A. I was in command on her.

Q. 26. Well, what was the next boat, if any, and in what
254 capacity and from what points?

A. After that I was on the Witchita Belle in the same trade in and about 1878 or '79. I was in command of her.

Q. 27. Passed island No. 76 how often a week?

A. I did not pass but four times a week, twice going and twice coming back each week.

Q. 28. On which side was the channel as to island 76 at this time?

A. Down to the left on the Mississippi side.

Q. 29. Did you run any other boat after the Wichita Belle in that time.

A. Yes, sir, I run the Illinois the same year.

Q. 30. Same year, what do you mean?

A. 1878.

Q. 31. Well, was the channel at the same place still in 1878 while you were on the Illinois?

A. Yes sir.

Q. 32. Well, when did you have any further experience or knowledge of island 76?

A. Well I have been up and down the river frequently since that.

Q. 33. Has there been any change of the channel at Island 76?

A. Yes sir.

Q. 34. If so, what?

A. The channel goes down to the right of the island.

Q. 35. When did the channel go through in to the Arkansas side?

A. Well, as near as I can recollect about 1882.

Q. 36. From the time you have known the island was there not a chute on the right?

A. Yes sir, there has been a chute there ever since I have been on the river.

Q. 37. Could that be run in high water with a boat?
A. Yes sir.
Q. 38. In time of low water did you run on the Arkansas side or the Mississippi side?
A. Well when there was low water we had to go down the bend.
255 Q. 39. By around the bend you mean on the Mississippi side?
A. Yes sir.
Q. 40. The main channel of the river was then up to that time, that is up to the '80's on the left side of Island No. 76?
A. Yes sir.

Cross-examination by Mr. SCOTT:

X Q. 1. Do you know the usual width of the Mississippi River?
A. Down there?
X Q. 2. Well, all along?
A. It's a mile wide here, I could not say exactly it varies.
X Q. 3. Do you know of any place where the river channel is under 1,000 feet.
A. No sir, I don't believe I do. I don't know of any down South of here; sometimes in low water a sand-bar may stick out and it gets mighty narrow. Down here below Cow Island I have known it to get very narrow in there.

Further deponent saith not.

GEORGE MALONE.
By E. J. HEIDEL,
Stenographer.

Indorsed: Filed Jul- 9, 1903. W. P. Feild, Clerk.

256 CHARLES LE VASSEUR, a witness on behalf of the complainants, being duly sworn, testified as follows:

Interrogatories Propounded by Counsel for the Complainants.

Int. 1. State your name, age, residence and occupation.
A. Charles Le Vasseur, 52 years old, civil engineer, Memphis, Tennessee.
Int. 2. How long have you been a civil engineer, and where and what amount of experience have you had in that line? State in full.
A. I graduated from the Ecole Polytecnique School of France in 1878. I was in the army as field engineer, as first lieutenant until 1883, and from 1883 to 1889 I was chief engineer of the Panama Canal. From 1890 to the present time, United States Assistant Engineer. Mississippi River Commission.
Int. 3. Have you been in the employment of the United States government; if so, how long and in what capacity?
A. I was United States assistant engineer from 1890 to date.
Int. 4. Assistant what?

A. Assistant engineer from 1890 to date.

Int. 5. What position do you hold now?

A. The same as previously stated.

Int. 6. State whether or not you are familiar with the Mississippi River and its banks and channel, and if so, what portion of the river and your means of such knowledge.

A. I am acquainted with the Mississippi River and its banks from Cairo to New Orleans, having surveyed the Mississippi River in the 1st, 2nd, 3rd and 4th Districts.

Int. 7. Do you know where Island 76 in the Mississippi River is located, and are you acquainted with the river at that locality?

A. I am.

Int. 8. What experience have you had, if any, with surveys of river banks by cross sectioning, sounding, etc. Please state fully.

A. I have been in charge of the survey of the Mississippi
257 River since I have been in the service of the government.

Int. 9. Please examine the map here handed you bearing certificate of Binger Hermann, Commissioner of the Land Office *Ex-Officio* Surveyor General, being map of Fractional Townships 11 and 12 South of the base line, Range 1 east of the 5th principal meridian. The said survey and plat stating on its face to have been made in February, 1827, by Daniel Miller, Surveyor General, and having on it the following certificate attached thereto, "Surveyor's Office, St. Louis, 22 January, 1829. The above plat of fractional Township- 11 and 12 south, Range 1 east of the 5th principal meridian is conformable to the field notes of the survey thereof on file in this office. (Signed) W. McRee, Surveyor of Public Lands, Illinois, Mississippi and Arkansas." Please examine said map and state by whom survey was made and when.

A. It was made by Mr. McRee, Surveyor of Public Lands in Illinois, Mississippi and Arkansas. The map is dated 22nd January, 1829.

Int. 10. Please file said map as Exhibit A to this your deposition as part thereof.

A. I do.

Int. 11. Please state what that map shows.

A. This map shows part of Arkansas, and some lines supposed the boundaries of Island 76.

Int. 12. What does that plat on its face, or where does that map on its face show Island 76 to be; I mean in what state, Mississippi or Arkansas?

A. It does not show anything in regard to what state.

Int. 13. What does it show?

A. It shows the surveyor only touches the island at three different points.

Int. 14. Where are those points as indicated?

A. Those points are, one at the head of the island, which I will mark A, two at the lower foot of the island which I will mark B and C.

Int. 15. Looking at said map again on the west, we notice a
258 certain portion of land sectionized. Is that shown to be in Arkansas or Mississippi?

A. That is Arkansas.

Int. 16. On the east we find a broad space between what is marked as Island 76 and the main land, with certain marks and lines drawn thereon. Now please explain what those lines mean from a surveyor's or engineer's stand point, of the Mississippi River.

A. The lines represented by dots or dotted lines, running from the Arkansas main shore to some point on the Mississippi side, or of the island side, indicate that the surveyor took a certain point on the bank opposite and ran it to that point by making a crude triangulation from the main bank to said points. I say crude, because his triangulation system is not contiguous or close, and cannot be but approximately correct.

Int. 17. In looking at that map would you say that the space enclosed, marked Island, was intended, or not, for Island 76 by looking to the Township or Ranges?

A. By the position I should think that it was intended for Island 76, but as I stated it is only an approximate locality of the island.

Int. 18. On the west side of the island where the figures noting the triangulations are shown, it seems to be much wider than that on the eastern side of the island. Please explain what that indicates, if anything, or what significance if anything as to the location of the channel at that point at the date of that map.

A. The line indicated as the Mississippi shore line on this map is only a rough approximation of the Mississippi bank line at that time. As far as the channel there is no indication on this map which will tend to show on which side of the island the channel was running at that time. The large portion of territory included west of the island between the bank of the island and the main shore of Arkansas may have been at the time of the survey, as it is the case in similar locations along the river, a wide flat or sand bar, which was covered only at medium stage, and the channel of the river may have been east of the island, between the eastern banks of the island and
259 the west bank of the State of Mississippi. If the sand bar west of the island was in existence the larger portion of the water of the stream must have been land.

Int. 19. Then if I understand you the width of the area between the island and the main shore of Arkansas does not show simply because it is wider than the space between the island and the State of Mississippi shore, then the channel was through that wider space? How is that?

A. No sir, the width of the channel or bed of the river does not indicate that the deepest water is found in these large sections.

Int. 20. Do you remember of any instance of such an island, say Island 63?

A. Island 63 is one.

Int. 21. Where there is a broad space of shallow water where the channel of the river is, if so, please explain it.

A. 63, as you stated is one case of it.

Int. 22. How is it at Island 63?

A. West of Island 63 between Arkansas and the west bank of the island for about 3,000 feet there is a very wide space which is covered by only a medium stage of water.

Int. 23. A medium stage of water?

A. Yes sir, which at the time was very flat. On the east side of Island 63 the bed of the river is very narrow, but deep, and for several years the channel or deepest water of the Mississippi used to be between the east bank of 63 and the west bank of the State of Mississippi from McLeod's Landing to Burke's.

Int. 24. Do you from an examination of that map see anything else that indicates that at the date thereof, the channel of the Mississippi River was east of Island 76? If so, state it.

A. This map does not show anything at all about where the channel of the Mississippi River used to be at the time of the survey.

Int. 24½. Does the eastern line, I mean the shore line, along the State of Mississippi indicate any particular thing as to where
260 the channel was, or how it was at that time?

A. No sir, because the line of the State of Mississippi, the east shore line was not accurately surveyed by Mr. McRee as shown on the map.

Int. 25. Please examine the field notes attached to that map, Exhibit A, and state whether or not, from them you can tell that under that survey Island 76 was intended by the engineer to be placed in the State of Arkansas.

A. There is nothing indicating that in the notes of this map.

Int. 26. Is Island 76 sectionized on that map?

A. Not only is the island not sectionized, but it is not even surveyed.

Int. 27. Can you state from that map alone where the channel of the Mississippi River was at the time of its date?

A. No sir.

Int. 28. State whether or not the distance across the Mississippi River as shown by that map, both above and below the island is shown, or can you tell the distance; if so, how?

A. You mean to say, can I tell the distance where those triangulation points are?

Int. 29. I mean between the island and the shore of Arkansas or the shore of Mississippi?

A. No sir, the distance between the island east bank and the west bank of Mississippi, there is nothing from which I can tell the distance.

Int. 30. Can you tell the distance between the shore line of Arkansas and the island on that map?

A. Yes, at three points.

Int. 31. Indicate those points.

A. A, B and C marked on the map, if I take for granted that the triangulations shown on the map are correct.

Int. 32. What are those distances?

A. If I had a scale I could scale it. That is the only way you can do it.

Int. 33. You have no scale with you?

261 A. Not with me, no sir.

Int. 34. Then you state that the distance across the chute

between the island and the Arkansas bank is shown as drawn to a scale; is that correct?

A. At three points.

Int. 35. You mean A, B and C, between those points you cannot tell anything about the distance.

Int. 36. I believe you have stated that the distance between the main Arkansas shore and Island 76 is shown by triangulations. State whether or not any measurement was made from the main shore of Arkansas to the island.

A. Yes sir, it was made from the main shore of Arkansas to the island. The surveyor did not go on the island to make a survey of the bank of the island, but took bearings from two points from the Arkansas shore to one point on Island 76.

Int. 37. State whether or not the distance shown on that map is from the north end of Island 76 to the Mississippi shore, or from the south end of the island to the Mississippi shore, or from the center of the island to the Mississippi shore. How is it done, or are the bearings made to the Mississippi shore at all?

A. There are no bearings from the island to the Mississippi shore. There are only some bearings or triangulations taken from the Arkansas main shore towards several points on the Mississippi shore.

Int. 38. State whether or not there is anything on that map to show the distance from Island 76 at any point of it to the main shore of Mississippi.

A. There is nothing to show the distance from the Island 76 to the main shore of the State of Mississippi on the map.

Int. 39. Mr. McAndrews in his deposition states that it is 22½ chains from the east bank of the island across to the main shore of the Mississippi as shown on the map before you. Now, state whether or not there is anything on that map to show any measurement or any distances between the main shore of the island and the main shore of the Mississippi side.

262 A. There is nothing on this map to show any measurement whatever ascertained by survey which would indicate the island and the west shore of the State of Mississippi.

Int. 40. Is it, or not, impossible from that map, for an engineer to calculate the distance from any point on the eastern shore of Island 76 to the western shore of the main line of the State of Mississippi, and if so, explain how that can be done at this date without the actual measurement by triangulation or otherwise of the surveyor at the time of the survey and the map was made?

A. There is no possible way to calculate any distance between the island and the Mississippi main shore from this map. This map is not intended to *either* represent either of those banks by actual survey.

Int. 41. Any attempt then to give the exact distance from that point of the island to the main shore west of it, from the map and field notes as shown on the map, would be mere guess work and speculation?

A It would be guess work.

Int. 42. Now, Mr. Le Vasseur, on examination of the said map,

shore line and curvatures, etc. as given, where would you say the main channel of the Mississippi River would be?

A. Do you take for granted the western — of the Mississippi River is accurate on this map?

Int. 43. I do not know. What is your experience about this map?

A. I tell you it is pretty hard. If I take for granted those curvitures are correct, I say it is here.

Int. 44. Then from that map I understand you to say it would merely be guess work?

A. That would be only guess work.

Int. 45. Then if I understand you those water lines drawn there of the Mississippi side are merely sketched, and not expected to be correct?

A. No sir. Furthermore to tell exactly where the channel of the Mississippi River was during this time of this survey this map
263 does not show any data whatever about the topography of the stream. This map is only intended for a land map.

Int. 46. In speaking of the right and left bank of the Mississippi River how is that counted, going down the river or going up the river?

A. The right and left coming down the river.

Int. 47. I will ask you to please examine the map here shown you of fractional Sections 35 and 36, in Township 11 South, in base line range 1 east of the 5th principal meridian, and fractional sections 1 and 2, in Township 12 south of the base line, Range 1 east of the 5th principal meridian, which is certified to by Binger Hermann, Land Commissioner at Washington, and contains the following certification: "Surveyor's Office Little Rock, Ark. 23 December, 1846. The above plat of fractional sections 35 and 36 in Township 11 south of the base line, range 1 east of the 5th principal meridian, and fractional sections 1 and 2, township 12 south of the base line, range 1 east of the 5th principal meridian, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved. The subdivision lines and meanders of Townships 11 and 12 south range, 1 east and southern boundary of fractional sections 35 and 36, Township 11 south range 1 east, amounting to 7 miles and 39 11/100 chains to the south range were surveyed in February, 1846 by John W. Garrettson, D. S., under contract of the 24th day of February, 1845, and were paid for by the treasurer of the United States upon accounts rendered and receipted by John W. Garrettson, D. S. (Signed) Wm Ralhaus, Surveyor of the Public Lands of Arkansas."

Now please state what that map and plat indicates relative to the position of Island 76, whether in the State of Arkansas or in the State of Mississippi.

A. This map indicates that the actual survey of the Island No. 76 was made, and this island was sectionized as being in the State of Arkansas.

Int. 48. I will ask that you please make that plat and map last above mentioned as part of your deposition, and file it here-
264 with as Exhibit B.

A. I do.

Int. 49. Taking that plat and assuming it to be correct at the time, from your experience as an engineer on the Mississippi River, how would you say that the crossing was made from the main shore of Arkansas to Island 76 by the surveyor? Please explain.

A. According to that map, the surveyor starts from a point west of Section 27 and across the territory between the main Arkansas bank and the west bank of the island by straight survey *azuinuth* and ground chaining on what is supposed to be a sand bar. At the time of the survey an examination could not have been possible as indicated on this map if any water having any depth would at the time of the survey have existed between the Arkansas main shore and the west shore of Island 76.

Int. 50. Looking at that map would you say that the crossing was made by the surveyor from the main shore of Arkansas to the west shore of Island 76 by triangulation or by actual chaining and survey?

A. By actual chaining.

Int. 51. What would that indicate as to that particular chute at that time as to the stage of the water, or whether it was the main channel of the chute, or a sand bar?

A. As indicated there would be a sand bar opposite the chute.

Int. 51½. From your experience as an engineer of the river would you say that the main channel of the river at that time was on the east or Mississippi side of the island or on the west side of the island between it and the Arkansas shore?

A. From the map, and for the reason that the territory between the Arkansas bank and the west shore of the island was a sand bar, I would state that the water on the Mississippi side must have at that time passed between the east side of Island 76 and the west bank of the State of Mississippi, wherever it may have been.

Int. 52. Mr. McAndrews in his deposition given in this case, in answer to Q. 28 states as follows: "Q. In case that the current or channel had been to the right of the island state whether or
265 not there would have been the caving bank on the Mississippi side just opposite Sections 4 and 5, Township 12, Range 1 east, or not." And he answers, "No sir, there would not." And he further states, "Further that the point shown on that map the salient point at X and Y on the Mississippi side would not have existed." Now, state whether or not from your experience of maps of the Mississippi River and surveys thereof, there is anything on that map that would show at that time a caving bank on the Mississippi shore opposite Sections 4 and 5.

A. There is nothing to show on that map or the map filed as Exhibit B to my deposition. There is nothing to indicate the caving bank.

Int. 53. Will you please give your reasons from your experience of maps of the Mississippi River, if you have anything to say in addition to what you have already said, the current of the Mississippi River did not pass through the chute where the survey is made west of Island 76 at the time of the survey?

A. From the map, Exhibit B. is forming an apex just about midway of the chute. If the Mississippi River would have gone through

the chute where there is sufficient current to form a channel, the west bank of the island would have been a concave instead of being rather convex at the time of the survey. The conformation of the island in regard to the main Arkansas bank seems to show that at the time of the survey the chute between Island 76 and the Arkansas main shore was a sand flat, and that the Mississippi River must have flowed across east of the island.

Int. 54. I will ask you again to look at the plat and Exhibit A to your deposition, and I will ask you to state—I will state that Mr. McAndrews is asked in his deposition, in answer to Question 28 as follows: "In case that the current or channel had been to the right of the island state whether or not there would have been the caving bank on the Mississippi side just opposite Sections 4 and 5, Township 12, Range 1 East or not." And he says, "No, there would not." And he further states, "That the points shown on the map, the salient points at X and Y on the Mississippi side would not have
266 existed." Now state whether there is anything on that map that would have shown a caving bank on the Mississippi shore opposite Sections 4 and 5.

A. I cannot answer that from this map because the Arkansas or Mississippi State line is only an approximate line, which is far from being accurate, and does not show any caving or the exact location of the banks.

Int. 55. Again, Mr. McAndrews is asked to state where the caving would have been in case the current had passed to the right of the island with reference to the Arkansas shore line, and he answers, "There would have been a caving bank and a concave bank of the river fronts of Section 27, Township 11, Range 1 East below the point marked 'D,' and a caving bank on the Arkansas side on the river front of Section 4-12-East." Now state whether or not such a state of affairs would have occurred in your experience of the Mississippi River.

A. No sir. If the Mississippi River would have flowed to the right of the Island 76 the Mississippi State bank line would have shown a deep pocket opposite 27. The Arkansas bank would have shown a caved bank at Section 34, and the Mississippi State bank would have certainly shown a caving bank for approximately from the foot of the Island 76 south to about Section 5.

Int. 56. From your experience with the maps of the Mississippi River is there anything by which you can judge accurately from the shore lines drawn as to whether the bank was a caving bank or not?

A. Not from this map.

Int. 57. Referring again to Exhibit B, plat to your deposition, I will ask you to examine in connection therewith a certified copy of the filed notes of that survey, which is certified to by S. E. Conway, Commissioner of State Lands, under date of December 3rd, 1903, and comparing the field notes aforesaid with said map Exhibit B, state whether or not you can tell whether that survey included Island 76 sectionized as part of the State of Arkansas, and explain it in your own way after looking over the same.

A. Those field notes are the notes of the survey made in
267 1846 of Island 76, also of the sectionizing of the said island, which places said island on that date as in Arkansas.

Int. 58. Will you please file said field notes as Exhibit C to your deposition, and as a part thereof?

A. I do.

Int. 59. In glancing over those field notes in connection with the map, Exhibit B, and you testified in regard to what Exhibit B shows. State whether or not those field notes sustain or carry out your views in regard to where the channel was at that time or not.

A. They do.

Int. 60. Have you or not heretofore examined those field notes in connection with the plates in this case?

A. I did.

Int. 61. Carefully?

A. Yes sir.

Int. 62. On the first page of said field notes, Exhibit C, there seems to be a rough diagram or plat of Island 76. I wish you would explain what the character of the chute between Island 76 and the State of Arkansas as indicated by the plat diagram on the field notes by the surveyor.

A. The chute between the island and the main bank of Arkansas according to the sketch, must have been dried and was at the time the sketch was made; that the bed of the river was east of the island, but the distance between the island and the Mississippi shore as shown on that sketch cannot be taken as correct, as no measure on the field notes is shown exactly by triangulation or otherwise the distance between the east bank of the island and the west bank of the State of Mississippi. The only distance shown accurately on this sketch and notes are the widths of the chute west of Island 76 and the Arkansas shore.

Int. 63. Please examine a plat here shown you, being all of Township 21, Range 8 West, Choctaw District, bearing the following certificate:

"The whole of this Township was surveyed by Benjamin
268 Griffin, Deputy Surveyor in January and February, 1830.
Surveyor's Office, Washington, Miss. May 31st, 1830.
Examined and Approved."
(Signed) JO. DUNBAR,
Surveyor Public Lands south of Tennessee, and registered,

October, 1830, and entered on the map, and exemplified to by Binger Hermann, Commissioner of Lands of the United States for the General Land Office of the Interior, dated Washington, D. C., Jan. 11th, 1899," and this map is further indentified by the names of Marshall J. Miller and Thos. W. Wilcox written in the lower left hand corner for certification. Will you please file said Exhibit, and make said plat a part of your deposition as Exhibit D hereto and a part heerof?

(Counsel for the defendants objects to the introduction of said map because it is not the complete map of said Township 21, Range

8 West of the Choctaw District of the State of Mississippi, but is only a portion [illegible]

A. I do.

Int. 64. Please examine said plat, Exhibit D to your deposition, and state from it what it appears to be, and from your experience as an engineer of the, — from the face of the map state where the channel of the Mississippi River was at its date with respect to Island 76, and whether or not the channel of the river was east or west of the island at its date according to the same.

A. This map, Exhibit D, is in relation to the channel of the Mississippi River in the same position as the map made Exhibit A. The hil-ography of the river is not shown on either of those maps, and for certainty the exact channel of the river cannot be determined by either maps. From examination of Exhibit D it seems to appear that the widest portion of the bed of the river at the time this map was made, was situated between the Mississippi side and the Island 76, but that is only an approximation, as on this map there is no data whatever about the hiliography of the river, and no data as
269 as to the exact width of the river, either between the State of Mississippi at that time and Island 76, or Island 76 and the bank of the State of Arkansas.

Int. 65. State from the face of that map and the field notes attached to it, on the Mississippi side at Township 21 there seems to be a survey and sectionizing of that Township complete up to the western bank of the Mississippi River, as touching the Mississippi side.

A. According to this map, it appears that the map represents the sectionizing or survey of Township 21, Range 8 West *in extenso* so far as it goes.

Int. 66. I will ask you to look again at said map, and state whether or not the channel of the Mississippi River as marked appears to be between the State of Mississippi and Island 76.

A. The Mississippi River channel is not marked on this map, but there is nothing about the channel on this map.

Int. 67. State what is marked there.

A. Only the word, "Mississippi River" is written between the Mississippi State bank and the eastern bank of Island 76.

Int. 68. Would that or not indicate from your experience that Island 76 was considered by the surveyor as belonging to the Arkansas side of the river?

A. I suppose from the map and the statement on the face of the map that the surveyor sectionized the whole of this Township 21, and that it was not in his mind that Island 76 belonged to Township 21, Range 8 West of the State of Mississippi, or he would have also sectionized said island. That is only an assumption on my part.

Int. 69. Please state the extent of your experience in the examination of old maps of the Mississippi River, and the present maps with reference to islands and cut-offs and, etc.

A. For the last 15 years I have been employed as engineer in most of the land cases where old maps and original data have been in question. I am now appointed by the State of Tennessee as con-

sulting engineer in the boundary discussion between the State of Arkansas and the State of Tennessee

270 Int. 70. Recurring again to Exhibit B to your deposition, Mr. McAndrews in his testimony also lays stress upon the fact that at the date of that map the channel of the river was west of Island 76 to the fact that on it there appears an arrow pointing down between Island 76 and the Arkansas shore. Now please state whether or not that arrow on these old maps is any specific indication as to where the channel of the river is, and what significance would you give to the position of the arrow on that map. Just explain it in your own way.

A. The old maps do not pretend to show in any manner, shape or form, where the channel of the river is or has been as the surveyor appointed by the land office has nothing whatever to do with the river proper, its channel, or its depth, but only had to survey and sectionize the territory for the State in which he has been appointed. It is a matter of impossibility for the old land office map to tell at the time of the survey where the channel of the Mississippi River was, or anything whatever about it, or the hil-ography of the stream. The arrow indicated on the map Exhibit B shows only that the Mississippi River was flowing daily in the direction of the arrow, and has nothing whatever to do with the channel of the river. This answer will apply also to the arrow shown on the map, Exhibit D.

Int. 71. Then if I understand you right, the pointing of the arrow on that map does not show where the actual channel of the river was, but the general direction of the river?

A. Yes sir.

Int. 72. Referring again to Exhibit B to your deposition, Mr. McAndrews in his deposition, in answer to Q. 33 has undertaken to state the distance at various points of Island 76 to the main shore of the Mississippi side, making his calculations from said map or a similar one. Now please state whether or not there is anything appearing on said map from the field notes, or otherwise, on which an engineer or surveyor could give, with any degree of accuracy the distance from the eastern shore of the island, to the western shore of Mississippi. If not, explain why not.

271 A. There is nothing shown on the map Exhibit B which will allow any surveyor to compute any accurate distance between the eastern shore of Island 76 and the main bank of the State of Mississippi. As I have already stated in my deposition the bank of the State of Mississippi is only sketched without any accurate measurement whatever from either the main bank of Arkansas or the east bank of Island 76.

Int. 73. Again Mr. McAndrews gives the shortest distance from the island to the Mississippi shore from a point opposite from the northwest corner of Section 24, Township 21, Range 8 as eight chains. And he gives the distance at the head of the island as designated on the map as 29 chains. Now, from the said map is it possible for an engineer to give these distances with any degree of accuracy?

A. I could not do it from Exhibit B. Such a thing could not be done from a map such as Exhibit B.

Int. 74. Could it be done from the maps shown as Exhibits A or D either?

A. From Exhibit A the distance between the main Arkansas shore or bank to the Mississippi shore could be computed at the points where the triangulations shown, but only at said points.

Int. 75. Then if I understand you it cannot be shown from the east side of the island to the Mississippi shore?

A. No sir.

Int. 76. I will ask you whether or not the reason that a chute is wider than where the main channel runs or whether one side is wider than the other is any indication as to where the channel of the river is.

A. The width of a chute is not in direct ratio with the channel of a river. Where the bed of a river is very wide, the bed is generally flat, and the channel at its least depths where the river is confined between banks a short distance apart it is generally where the biggest depths or the deepest channel is found.

Int. 77. Referring again to Exhibit B to your deposition,
272 Mr. McAndrews in his deposition states that independent of the arrow, the contour of the Arkansas bank and the bank of the island indicate the channel passed west of the island at the time the plat was made. I wish you would examine the plat and explain how this is possible to appear from the map itself.

A. In answer to this question I will refer to one of my previous answers, in which I stated that the conformation of the west bank of Island 76 tended to show that the main current of the river was not passing at the time the survey was made in Exhibit B through the chute between the west bank of Island 76 and the main Arkansas bank.

Int. 78. Will you please examine a map here shown you, purporting to be an additional map or plat of Township 21, Range 8 West, Choctaw District, made Exhibit — to Mr. McAndrews' deposition and in connection with his deposition, in respect to his measurements on said map? State your views in reference to the correctness of his deductions and calculations with respect thereto.

(It is agreed that the witness may answer this question subject to the right of cross-examination, and also that the answer will be direct to the question as to Mr. McAndrews' measurements and distances betwen the Island and the Mississippi bank, and whether or not from the map, it was possible to make such measurements.)

Cross-examination by Mr. A. Y. Scott, for Defendants:

Q. 1. Referring to the map filed as Exhibit A to your deposition, is it not possible for that map to state the distance from the Arkansas shore to the Mississippi shore, at several different points on the map?

A. Yes sir, I answered that question that wherever the triangulations were taken, taken for granted those triangulations are correct the distance from the Arkansas shore to the Mississippi shore can be obtained, but it can be obtained only at those points.

Q. 2. Now, the distance from the Arkansas shore to Island
273 76 is obtainable on the map at 3 different points, isn't it?

A. Yes sir, at A, B, and C.

Q. 3. Isn't it possible to get the distance from point marked A at the head of Island 76 to point marked D on the Mississippi shore?

A. Yes sir, by scaling. The only trouble I found in those triangulations are that the apex of the triangulations is very small. The base of the triangulations is so small that by skipping 3 or 400 feet would be detected.

Q. 4. So the distance can by scaling be ascertained from the point C at the south of the Island 76 to the point E on the Mississippi shore, can't it?

A. In the same way as from A to B.

Q. 5. While the triangulations on this map are not sufficiently close together to give the exact shore line, that was evidently the intention of the surveyor to approximate the Mississippi shore line, wasn't it?

A. Yes sir.

Q. 6. And when having determined the point on the Mississippi shore he sketched in the shore line in conformity to what he saw that it was at the time, didn't he?

A. Yes sir, he sketched it.

Q. 7. Then it is reasonable to suppose that that shore line is approximately correct, isn't it?

A. So far as the sketch goes.

Q. 8. I do not mean accurately correct as the Mississippi River Commission now makes its shore lines, but approximately, in that there would be a concave and convex bank at the places noted on the map?

A. As far as the contour of the State of Mississippi taking the point where the triangulations now take, I would as an engineer attach no significance whatever.

Q. 9. Simply because the triangulations were not sufficiently close together.

A. Yes sir, I would not pay any attention to them.

274 Q. 10. Then you do not think that the contour as given of the shore of Mississippi is sufficiently accurate to make any determination?

A. No sir.

Q. 11. In reply to a question of Captain Myers applicable to Island 76 as shown on plat Exhibit D to your deposition, you state that it was probably the idea of the engineer that Island 76 was not a part of the State of Mississippi, drawing your inference as I understand it that he did not plat the Island. Doesn't the same conclusion follow from the failure to plat the island by the engineer who made the plat Exhibit A to your deposition?

A. It is the same answer to the same question. In 1829 and 1832 that island was neither sectionized in Arkansas or Mississippi from the records in front of me. It may have been that during that period the island was only a very low sand bar beginning to be covered by small willows as it is the case along the Mississippi, and

neither the State of Arkansas or the State of Mississippi deemed it worth enough to claim it for its state. After 1832 that accretion must have become very large and in 1846 the surveyor of Arkansas had the island sectionized calling it Island 76, and from the records I have in front of me it is the first and only survey of the accretion.

Q. 12. You have not before you the map filed as Exhibit D to Mr. McAndrews' deposition in which Island 76 was sectionized in 1830 I believe the date is as a part of Township 21 Range 8 West, Bolivar County, Mississippi?

A. No sir.

Q. 13. You have never seen that map?

A. No sir.

Q. 14. If then the island was sectionized in 1830 by the surveyor the inference drawn from the maps before you as to the island not being sufficiently valuable to sectionize, would of course, not be correct?

A. Of course not.

Q. 15. Doesn't it appear that this plat filed as Exhibit D
275 to your deposition is of a fractional section?

A. No sir for the reason that the map carries with it a certificate from the Surveyor's office at Washington that the whole of this Township was surveyed by Mr. Griffin, D. S. in January and February, 1830, which seems to indicate from all that I have got before me that a whole survey of this Township 21, Range 8 West was made.

Q. 16. Doesn't this plat also have on it "also traverse and re-traverse of Island 76"?

A. Yes sir, but that was made in 1832.

Q. 17. But the plat itself does not show the traverse and re-traverse of Island 76?

A. No sir.

Q. 18. The Township as appears from the map only contains 35 sections, doesn't it?

A. Yes sir.

Q. 19. Doesn't that make it what would be termed a fractional section?

A. Yes sir, if all of it is in Mississippi. If the balance or a portion of it is in Arkansas of course, the Township will not be but 35 sections.

Q. 20. But it is a fractional section?

A. Yes sir.

Q. 21. You had no experience with the Mississippi River prior to 1890?

A. No sir.

Q. 22. Your answers here are not given from personal knowledge, but from the maps before you?

A. They are given by personal knowledge as engineer of the Mississippi River Commission.

Q. 23. I mean your testimony is based upon the maps themselves, and not upon any personal experience?

A. No sir, upon the maps. Of course, I can only testify to what the maps represent.

276 Redirect examination by Capt. D. E. MYERS:

Q. 1. Do your records or your experience show you at what date it was the island known as Old Napoleon, about 10 or 12 miles above Island 76 was washed away?

A. By personal experience no. It was before my coming on the Mississippi River, but from the records of the office I could give you the exact date.

Q. 2. Do you know where the position of Old Napoleon was?

A. Yes sir.

Q. 3. Would or not the sudden washing away of Old Napoleon force the channel of the river down through the chute west of Island 76 more or less?

A. Well, the sudden change of Old Napoleon would certainly affect all the regimen of the river below its location.

Q. 4. And the washing away of Old Napoleon would certainly throw the volume of the river west of Island 76?

A. It did this thing. The present Island 76 is to my knowledge not the original Island 76. The original Island 76 has been washed away, and what is called now Island 76 is a new formation made to the eastern bank of the original Island 76.

Q. 5. How do you know that?

A. Because I know it by personal observation.

Q. 6. Previous to the washing away of Old Napoleon there was a sand bar or chute between Island 76 and the Arkansas side, wasn't there?

A. Yes sir.

Q. 7. And as indicated the channel of the Mississippi River was really on the Mississippi side of the river before the period of the Old Napoleon being washed away. After the washing away of Old Napoleon the channel changed down on the Arkansas side?

A. It did.

Q. 8. In other words the channel changed from the Mississippi side of Island 76 to the Arkansas side?

A. It did.

277 Q. 9. You know what date that was done?

A. I could find out at the office. I have got no positive recollection. That was done at 76 to my knowledge.

Q. 10. Done at 76?

A. Yes sir.

Recross-examination by A. Y. SCOTT, for defendants:

Q. 1. You have no personal knowledge in regard to the whereabouts of the channel of the Island 76; you know where it is, at present?

A. Yes sir.

Q. 2. You have no personal knowledge of the channel prior to 1890?

A. No sir, except from the records of the office. We have got the records from 1874.

Q. 3. And it is only from that date that you know of the channel?

A. Yes sir.

Q. 4. Island 76 is now a part of the main shore of Mississippi, isn't it?

A. Yes sir.

Q. 5. And you state that none of the original Island 76 is remaining?

A. No sir. This is an accretion.

Q. 6. What is there now is an accretion, and is attached to the Mississippi shore?

A. Yes, but it was attached by accretion.

Redirect examination by Mr. D. E. MYERS, for complainant:

Q. 1. Is there a chute at high water running between Island 76 and the Mississippi shore?

A. Yes sir.

Q. 2. How wide is the chute between there?

278 A. I could not tell now, without looking at my records.

Q. 3. Between Island 76 and the Mississippi shore at this time?

A. I would have to look at my notes.

Q. 4. You have known the island personally since 1890?

A. Yes sir.

Q. 5. And previous to that you did not know of it?

A. No sir.

And further deponent sayeth not.

After reading over his deposition, the witness made the following statement:

After having read over my deposition as written out by the Notary, I find that I cannot sign and subscribe to it as it was given and written out, because in my answer to re-direct examination, Q. 4, page 28 I stated as appears that, "The present Island 76 is, to my knowledge, not original Island 76. The original Island 76 is a new formation made to the eastern bank of the original Island 76,"—and in re-cross examination by Mr. Scott, in answer to Questions 4, 5, and 6, I stated in substance that Island 76 is now a part of the main shore of Mississippi. That none of the original Island 76 is now remaining, but is now an accretion attached to the main shore of Mississippi—attached to the main shore of Mississippi by accretion.

When I made these statements I saw a look of amazement and incredulity flash over the face of counsel for both parties, so after closing my deposition I commenced thinking about it, and investigated the question and find that in making above statements I was entirely mistaken, and that at the particular moment my mind was directed to another island, to-wit, Dean's Island.

I now state that on reflection and investigation I find that I was utterly mistaken at the time, and correcting the same now state that Island 76 has not washed away or accreted to the Mississippi shore, but is intact as it existed in 1830 and 1836, and that the washout

the deposition of Mrs

12 South Range
of the Lines thereof
of Pub Lds

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of Old Napoleon caused the sudden change of the channel
279 from the eastern side of the island to the western side.
With this correction I sign this deposition.
(Signed) CHAS. LE VASSEUR.

Endorsed: Opened and published Nov. 13, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

280 4–207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of Ts. 11 & 12 S., R. 1 E., Fifth P. M., Arkansas, is a true and literal exemplification of the township plat to which it purports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Arkansas.

[Endorsed:] Ex. A. Andrews.

(Here follows map marked page 280*a*.)

281 4-207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of Island in Ts. 11 & 12 S., R. 1 E., Fifth P. M., Arkansas, is a true and literal exemplification of the township plat to which it purports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Arkansas.

[Endorsed :] Ex. C. Andrews.

(Here follows map marked p. 281*a*.)

ellen.

Little Rock Ark 23° Dec 1846.

the Base line Range 1 East of the
Range 1 East of the 5th Prin Meder
ace which have been examined

Sections 35 & 36 Town 11 South Range
John M. Jamerson D. S. under con-
United States upon the accounts sen-
to office as per Voucher No 7. 4th

Wm Pelham

r of the Public Lands.

McLean.

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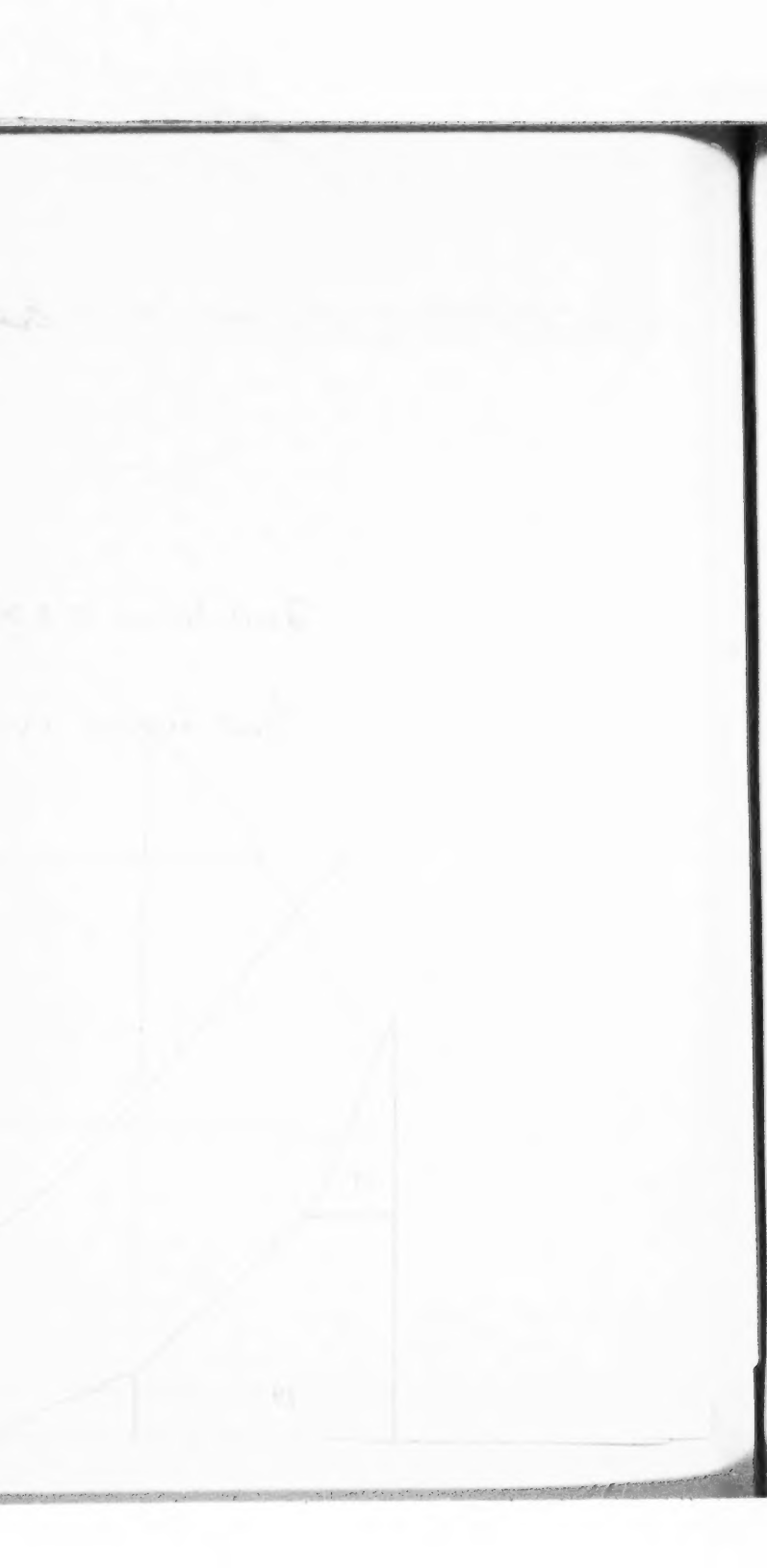
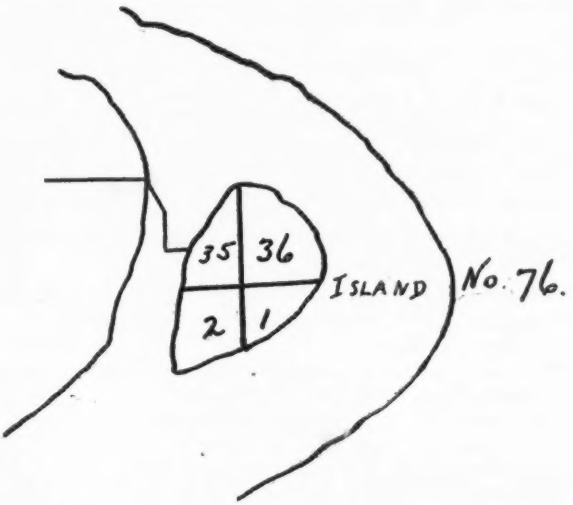


282 EXHIBIT "C" TO DEPOSITION OF CHAS. LE VASSUER.

Original Field Notes of Surveys
in
T. 12 S. R. 1 E. Frl. Sections 1 & 2. } Island No. 76.
T. 11 S. R. 1 E. Frl. Sections 35 & 36. }



February 7th, 1846. With David Garretson and William Given for chainmen and blazers, I go the line between Secs. 27 & 34 T 11 S. R 1 E. and run on said line to adjust my compass to said Township in order to survey the Island 76 which lies opposite to said Township the main channel being on the left or Mississippi side of said Island and the inhabitants of said Island vote and pay taxes in the State of Arkansas.

Chain compared. It agrees with the Standard.

With my compass at a variation of 6°–15 E. I commence at a fore and aft notched tree at 27.77 running East on the line between Secs. 27 & 34 T 11 S. R. 1 E. and run E.

At 12.26 chs. from the Sweet gum the fore and aft tree fell 2 lks. North of ¼ sec. cor. at 35.01 from ¼ section corner fell 9½ lks. North of the fract. sect. cor (noted at 75 chains) on bank of Mississippi river.

Thence I adjust my compass to a variation of 6° 5′ East. Thence from above corner which I count as 75.00 chs. East of corner to secs. 27. 28. 33 & 34 I run on sand bar in order to extend line across to Island.

283 Thence S 24½ E. 50.00
" S 18 W 21.00
" East 47.29 chains across the chute.

Distance across obtained by calculation (this channel is wide but

in low water it is very shallow when I passed down Decr. 27th. 1845 it was with difficulty I could get my skiff through this channel.)

Feb. 7th, 1846.

February 8th. Meander down right bank of Island 76

Thence S 23½ W. 15.84 chs. having made 80.00 chs. South Latitude, 68.02 chs. East Departure & 12.80 West Departure from the corner to fract. secs. 27 & 34 on the right and West bank of Mississippi River.

Set a post corner to fract. secs. 35 T 11 S. R 1 E. & 2 T 12 S. E 1 E. from which a

Pecan 30 ins dia. brs N 65 E 7¼ lks. and a

Hackberry 8 ins dia S 41½ E. 62½ lks.

Thence from above corner run East on a true line between secs 35 & 2 Townships 11 & 12 South R 1 E. being 50.22 chs. East of the point where the corner (to sects. 2 & 3 & 34 & 35 Townships 11 & 12 South Range 1 East) would fall from which corner I count the distance on this line.

60 00 Left an old field which entered a few links from fract. sect. corner.

65 00 An Elm 15 ins dia.

80 00 Set a post corner to sections 1.2.35 & 36 Townships 11 & 12 South Range 1 E. from which a
Hackberry 8 ins dia brs N 56½ W 21¼ lks.
Sweet gum 15 ins dia brs. N 29½ E. 19¼ lks.
Hackberry 6 ins dia brs S 36½ E. 62 lks.
Sycamore 10 ins dia brs S 51¼ W 41 lks.
Land first rate soil. Timber Cottonwood, Hackberry, Elm, Boxelder & undergrowth hackberry bushes and vines.

284 East on a true line between secs. 1 & 36 Ts. 11 & 12 S. R 1 E.

00 82 A Hackberry 8 ins dia.

40 00 Set a ¼ sec corner post from which
A Hackberry 6 ins dia brs N 62½ E. 19 lks and a
Mulberry 5 ins dia brs S 23 W. 33 lks.

47 25 To the river on the East side of the Island where set a post corner to fract. sects. 1 & 36 T 11 & 12 S. R 1 E. from which
A Cottonwood 9 ins dia. — N 37 W. 41 lks.
A Cottonwood 11 ins dia brs S 38½ W. 54½ lks.
Land 1st. rate soil mostly above overflow. Timber Cottonwood
Hackberry Mulberry Box-elder &c. Undergrowth Hackberry bushes
and vines.
South between secs, 1 & 2. T 12 S. R 1 E.

5 47 A Hackberry 12 ins dia.

40 00 Set a ¼ sec cor post from which a
Box-elder 8 ins dia brs N 6½ W 12 lks
Elm 13 ins dia brs S 60 E. 18¾ lks

43 58 A Box-elder 7 ins dia

51 50 To Mississippi River (on S. E. side of Island. River runs S W)
Where set a post cor to fract secs. 1 & 2 from which a
Cottonwood 20 ins dia brs N 48 W. 23¼ lks and
Box-elder 9 ins dia brs N 33½ E. 36 lks.
Land first rate soil. Timber Cottonwood, Hackberry, Box-elder Elm &c. Undergrowth principally Grade vines & rattan vines.
North between secs 35 & 36 T 11 S. R 1 E.
6 66 A Cottonwood 36 ins dia.
40 00 Set a post for ¼ sec cor from which an
Elm 6 ins dia brs N 32 W. 26¾ lks
Hackberry 5 ins dia brs S 10 E. 63½ lks
43 62 Entered George Crane's field, brs East & West
63 88 To the chimney of George Crane's house, brs N W & S E.
Thence offset West 50 lks
" North 112 "
65 00 285 " East 50 " regained the line North of Crane's House.
70 00 To Mississippi River a few chains East of the extreme Northern point of the Island where set a post corner to fracts.
sects. 35 & 36 from which
An Elm 11 ins dia marked B T brs East 130 lks
Cottonwood 20 ins dia brs S 24¼ E. 471 lks.

There is not any tree within 15.00 chains of the line on the West. Land first rate soil. Timber Cottonwood, Hackberry, Box-elder Elm &c. Undergrowth vines.

Thence Meander from above named corner to fract. secs. 35 & 36 down the right side of Island 76 through sect. 35 T 11 S R 1 E.

Thence West 1.50 chs.
" S 14 W 4.00
" S 7 E 4.00
" S 20¼ W 35.00 at 14.00 left field
" S 33 W 17.40 This course passes a house at about 10 chs
" S 23½ W 15.84 To the Corner to fract.

secs. 2 & 35 T 11 & 12 S. R 1 E.

Land first rate soil. Timber Cottonwood, Hackberry, Elm, &c. Undergrowth Hackberry *vines* & vines.

Thence Meander from Corner to fract. secs. 2 & 35 T 11 & 12 S R 1 E. on West side of Island down the Mississippi River through section 2 T 12 S. R 1 E.

Thence S 16¾ W 10.00 at 3.50 entered an old field without any fence
" S 12½ W 24.00 at 3.00 left old field
" S 23¼ W 22.00 set a temporary stake and quit work for this day.

The last course, viz: S 23½ W. Entered a field at 90 lks, & leaves it at 10.00 chs.

Chain compared. About ¼ of an inch too long. Take out rink

which adjusts it. Most of the notes of this date copied from a scrap of paper.

FEBRUARY 8TH, 1846.

Continue the above meanders from temporary stake.

286 Thence S 29 W. 16 chs. At 4.50 chs. on this course entered John Loving's field. Left it at 15.50

Thence S 43 W. 14 24 chs. to the lower point of the Island.

Thence up left hand chute of river.

" N 72 E. 27.00 chs. At 14.00 chs. on this course entered Loving's field & at 26.00 ch. J. Loving's house 100 lks to the left.

Thence N 69½ E. 21.50 chs.

" N 58½ E. 14.00

" N 66½ E. 6.88 to the cor. of frac. secs. 1 & 2. T 12 S. R 1 E. on S. E. side of the Island.

Land 1st. rate soil. Timber Cottonwood, Hackberry, Boxelder &c. Undergrowth Hackberry bushes vines &c.

Thence Meander from above named corner to fract. secs. 1 & 2 up the left hand Shute of Mississippi River through Section 1 T 12 S. R 1 E.

Thence N 58½ E. 15.00 chs.

" N 52¼ E 20.00

" N 39 E 25.00

" N 14½ E 12.34 chs to the cor. of fract. secs 1 & 36 T 11 & 12 S. R 1 E. on the East side of Island 76 on left hand chute or main channel of Mississippi River.

Land first rate soil. Timber Cottonwood, Hackberry, Boxelder, &c. Undergrowth Cottonwood bushes.

Meander from above named corner to fract. secs. 1 & 36 Townships 11 & 12 S. R 1 E. along up the main channel of Mississippi river through section 36 T 11 S. R 1 E.

Thence N 5¾ E 17.00 chs.

" N 11 W 9.50

" N 23¼ W 15.00

" N 39 W 27.00

" N 62 W 16.00

287 " N 81½ W 10.38 to the corner of fract. secs. 35 & 36 at the head of Island 76 on main channel of Mississippi River.

Land 1st. rate soil near the river subject to overflow from 2 to 4 ft. Timber and undergrowth mostly cottonwood.

February 9th 1846.

STATE OF ARKANSAS:

Office of Commissioner of State Lands.

LITTLE ROCK, ARK., *December 31st*, 1903.

I, F. E. Conway Commissioner of State Lands for the State of Arkansas do hereby certify that the annexed and foregoing four pages, being a transcript of the Original Field Notes of Survey of Island 76 in the Mississippi River, is a true and correct copy of said Original Field Notes on file in this office.

T. [illegible]

Eng. D. to Lessee

Marshal J. Miller
Thos. W. Wilcox

FOLD OUT IS TOO LARGE TO BE FILMED

In testimony whereof I have hereunto set my hand and official seal this 31st. day of Dec. 1903.

[SEAL.] (Signed) F. E. CONWAY,
Commissioner of State Lands.

Endorsed: Filed Dec. 5, 1905, W. P. Feild, Clerk.

288 4–207. T. P. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 7, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed photolithographic copy of plat of T. 21 N., R. 8 W., Choctaw Meridian, Mississippi, is a true and literal exemplification of the township plat to which it imports to relate, now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office.]

BINGER HERMANN,
Commissioner of the General Land Office
and ex-Officio Surveyor-General of Mississippi.

(Here follows map marked page 288*a*.)

289 *The Additional Deposition of Charles Le Vasseur.*

Q. State your name, age, residence and occupation?

A. Charles Le Vasseur; Civil Engineer; 53 years old; I live in Memphis, on Vance Street.

Q. Are you the same Charles Le Vasseur who has given a former deposition in this case?

A. I am.

Q. In your original deposition, Int. 78 in chief, you were asked as follows: "Will you please examine a map here shown you, purporting to be an additional map or plat of Township 21, Range 8 West, Choctaw District, and made Exhibit to Mr. McAndrews' deposition and filed with his deposition, in respect to his measurements of said land, and state your views in reference to the work, and to his deductions and calculations in respect thereto?" We note that you did not answer that question, and it is still left blank. Can you answer it now, and if not, why not?

A. I can answer only as to the map that is produced to me is concerned. That is by scan-ing the dimensions from shore to shore, and the dimensions from point to point on said map, taking for granted the plat as representing the accurate field notes of that survey, the field notes of that survey not being shown to me.

Q. Can you accurately answer the question without the field notes being before you, and state whether or not they are before you now?

A. I have not the field notes before me now. I can state only as to the scaling distances between the points on the map.

(By Mr. SCOTT:)

Q. You refer to this copy, do you not?

A. Yes sir.

Q. Recurring again to the width of the channel of the chute or whatever it may be called between Island 76 and the Mississippi shore, state whether or not the United States Mississippi River Commission has made an accurate survey and sounding of the width of the channel of the river and the depth thereof between Island 76 and the Mississippi shore about 1881?

A. Yes sir, since the survey was made by the Mississippi River Commission.

Q. Had such a survey as that been made before that time?

A. No sir, not of that character.

290 Q. I will ask you whether or not from the field notes and survey of the Mississippi River Commission of December 1881, you have made and prepared a sketch or a map showing *the* from the data of that survey, the exact condition of Island 76 with respect to the Mississippi shore and Arkansas shore?

A. I did.

Q. From what data did you obtain that information?

A. From the official records of the Mississippi River Commission.

Q. Did that include the field notes and surveys and triangulations and cross-sections of the river at that date?

A. It included all the original survey of that date.

Q. I will ask you to state whether or not you have drawn a plat of the condition of the river at Island 76 on both the western and eastern side-, including the depth of the river at various points, and the width thereof, and of the shores on that survey and the hydrographical survey of 1881 by the United States Government?

A. It is a copy of the official map made under the direction of the Mississippi River Commission in December 1881 from the field apograph, taking in the soundings, survey, triangulations and hydrography of the river.

Q. Do you consider it correct or not?

A. It is correct to my knowledge.

Q. If I understand you correctly you were not present at that survey and examination, but you took it from the official records of the United States Government as to that survey?

A. I did.

Q. I will ask you whether or not the map that you have drawn is correct in accordance with the field notes and survey?

A. It is an exact copy of the original map of such date made under the direction of the Mississippi River Commission.

Q. Will — please make that map that you have drawn as to the facts of the condition of that river at Island 76, and the land on each side of it in 1881, as surveyed and mapped by the Mississippi River Commission, Exhibit "A" to this your additional deposition?

A. I do, so, as requested.

Q. I notice on that map certain lines drawn on the eastern and western side of Island 76, and referring particularly to the
291 eastern shore of Island 76, I notice a peculiarly shaped formation at the head of Island 76 at that date, and I will ask you to explain what that means, whether it is a sand bar or a formation being created there or not at that date?

A. Yes sir, it represents the extent of the sand bar or mud bar formation under the head of Island 76 in 1881 showing above the land contour at the time of the survey.

Q. I notice on that map certain black lines, and take for instance the eastern black line marked by the figures 2400, 2450, 2500, 2550, 2600 and 2650. Please state what that line particularly represents, and what those numbers represent—I mean the extreme east black line?

A. The line represents the levee line of the Mississippi side, and the figures enumerate the stations along the levee.

Q. You mean the figures, 2450, etc. on the extreme eastern line represents the levee and stations on that levee?

A. I do so.

Q. Now, I notice on that plat an interior black line both on the Mississippi side and next to the Island. Now please explain what those lines represent at that time?

A. That line, the first black line west of the levee line represents the bank on the Mississippi side at the time of the survey.

Q. What does the interior black line, I mean the one west of the last line you have spoken of?

A. The second line west of the levee line represents the eastern boundary of Island 76 at the time of the survey.

Q. And the next black line what does it represent?

A. The third black line west of the levee line represents the west boundary of Island 76.

Q. I notice at the head of Island 76 a peculiarly shaped line in a triangular shape just at the head. Please explain what that is as shown by that map and survey of 1881?

A. That is the sand bar formation at the head of Island 76.

Q. You mean that that sand bar, that peculiar formation has been added to the land on top of Island 76?

A. I do.

Q. Please state, if you can, from that plat and map 1881
292 the width of the river, at the head of Island 76, or in other words at the head of the sand bar that you have last described at Island 76, between it and the Mississippi shore?

A. 1850 feet.

Q. Well from that line, do you mean that is the actual measurement.

A. Yes sir, the actual measurement.

Q. Now, I will ask you to take the distance between the eastern black line bordering on the Mississippi shore and the western black line bordering on Island 76 shore, and give me the depth of the river, first, below the line, and at the top of the head of the sand bar attached to Island 76, and carrying it on down through to Bolivar Landing?

A. You mean the maximum depth?

Q. I mean the actual depth given as shown on that map at the different points given, and mark your first one A, B, C, etc. on the side?

A. At A, from the sand bar towards the Mississippi shore, 21, comer, 23, 24. Range B, from the sand bar to the Mississippi shore 19, 21, 38, 44, 51.

Q. That shows the depth of the river as you go along?

A. Yes sir. On range C, Fractional range, 22, 34. On Range D, Neblett's Landing, 15, 19, 34, 48, 62; Range E, 21, 26, 34, 45, 49; Range F 28, 31, 44, 46, 56; Range G, 14, 27, 29, 32, 34, 42, 44; Range H, below Stormville Landing, 14, 33, 42, 49, 54; Range I, 14, 16, 41, 53, 72; Range J, 12, 27, 39, 46, 63, 42; Range L, 14, 21, 49, 54, 59; Range M just below the foot of Island 76, 77, 14, 56, 58, and, 59.

Q. I have noticed that you have given the various grades of depths around Island 76 on the eastern side, and they commence at a low depth and run to a high depth. Where does that low depth commence?

A. It is next to the Island on the Mississippi side.

Q. And these numbers that you have given represent the different of that channel at the particular points in 1881 by the Government survey and soundings?

A. It does.

Q. State whether or not you, under your personal supervision

made the survey of that channel you have just described on the eastern side of Island 76 was it made, by you or under your immediate supervision, including measurements, soundings, etc. State how it was?

293 A. The survey of the bank lines was made in November, 1899 under my direction, and are shown on the map by red lines.

Q. I notice on that map red lines embracing the distance from Bolivar Landing on down to the end of Island 76, and up to the head of it. State what that represents—I mean the red line marked?

A. The red line from Bolivar Landing upwards on the Mississippi side represents the extent of caving which took place between 1881 and 1899.

Q. You mean that represents the changes that were made on the east side of the Island 76 in the river from 1881 to 1899 under your survey in 1899?

A. It does, yes sir

Q. On that map, I will ask you to designate the width of that channel on the Mississippi side of Island 76 at the different points designated thereon—what the width is commencing at the south near Bolivar Landing, giving the width at that point, and marking it Number 1, and continuing out at every point where the width of the channel was taken in 1899, marking it respectively, 2, 3, 4, 5, and etc., or whatever the numbers go to?

A. Number 1 above Bolivar Landing in the chute, 700 feet; No. 2, 950 feet.

Q. You mean the width of the channel at that point?

A. Yes sir. No. 3, above Stormville Landing, 1000 feet; No. 4, 700 feet. is about 2000 feet below the mouth of Vermillion Lake.

Q. I will ask you whether or not that channel represented by red lines from No. 1 as marked by you to No. 4 should have indicated the water in the width of that channel?

A. Those dimensions from No. 1 to No. 4 are the channel between the western Mississippi shore and the eastern boundary of Island 76, and show the space at the time of the survey covered by water.

Q. Now, in that survey of 1899 from D or Neblett's Landing, north, state what the condition of that channel or chute was at that time with respect to sand bar or otherwise in November, 1899?

A. In November, 1899, from 150 feet below the mouth of Vermillion Lake to a point 2500 feet north, sand was existing and the condition of the chute was dry.

Q. What was the stage of the river, if you know in November, 1899, at Memphis, since you made that survey?

A. By the record of Memphis gauge official records, the highest gauge during the month of November, 1899 was 1-05 plus.

294 That means low water.

Q. That is pretty near down to zero?

A. One foot five tenths above it was.

Q. And it was during that month of November that you personally had that survey made and an examination of that chute or bend east of Island 76?

A. The date of the map shows it.

Q. Then if I understand you, that was at a time of extreme low water gauge on the Mississippi River?

A. That was at a time of low water gauge, or stage.

Q. Now, in speaking of that sand bar at the upper end of Island 76 on the Mississippi side what would have been the effect of a gauge of water at Memphis of say 12, 15, or 20 feet. Would that have covered that sand bar, and gone through the chute?

A. I think it would, yes sir.

Q. Do you know what the gauge of water is at Memphis at high water mark?

A. It was 39 prior to the closing of the St. Francis Levee. Now, it is only a guess. We do not know. It may be 44 and it may be 46, this is due to the closing of St. Francis basin.

Q. Well, you have said that a gauge of 15 feet at Memphis would have thrown the water over the sand bar at the head of Island 76 on the Mississippi side. Now, what would a gauge of 33 feet at Memphis have done?

A. Put more water on the sand bar.

Q. Would that put water enough on the sand bar to run steamboats over the sand bar?

A. I suppose so.

Q. I notice at the head of the chute in 1881, at the head of the ac-retions of the Island 76, the water was from 22 to 24 and 23 feet, and just below that on the Mississippi side it was 38 and 44 feet deep, and down to Neblett's on the Mississippi side 62, 44, and 18 and 19 feet, graduating back to Island 76. Was that the correct depth of the water at that time in December, I mean as shown by the Government calculations in December, 1881?

A. It is, yes sir.

Q. And the red lines within the black lines, are 700 feet, 1,000 feet 950 feet, and 700 feet, commencing at the head and going down was the width of the channel on the Mississippi side of Island 76 in 1899?

295 A. That is right, yes sir.

Q. Now, Mr. Le Vasseur, I notice that from the condition of that chute in 1881 by the Government survey and examination to 1899, when you made the survey, there has been a change. I will ask you whether or not that change does or does not show that there has been an addition by ac-retion to Island 76, as indicated by your statement, and the red lines next to the island of a sand bar formation to that Island. Explain that?

A. The eastern boundary limits of Island 76 have been increased by sand formation or deposit between December, 1881, and November, 1899 to the extent shown between the red line and the black line?

Q. I notice on the eastern formation of the black line and the red line, and by that I mean that next to the Mississippi shore, there has been some slight caving. Is that properly indicated by your map?

A. It is, yes sir.

Q. I will ask you whether or not most of the additions of sand bar indications, shown by the last survey of map of 1899, shows attached to the Island, and not to the western shore of Mississippi?

A. It is supposed to show attached to the eastern shore of Island 76.

Q. When did you last see that chute or channel between Island 76 and Mississippi?

A. In 1899.

Q. Island 76, was it or not then attached to the Mississippi shore except by the sand bar you have indicated?

A. Only by the sand bar when the water was low.

Q. And that was in extreme low water?

A. It was at the time the survey was made, the gauge was 1-05 at Memphis.

Q. You say the maximum in Memphis is about 39 feet?

A. Yes sir.

Q. Mr. LeVasseur, in your former deposition in this case in answer to re-examination, Int. 4, as follows: "The washing away of Old Napoleon would naturally throw a volume of water over Island 76, and it did this thing.

296 A. The present Island 76 is not the original Island 76. The original Island 76 has been washed away, and what is now called Island 76 is a new formation made at the eastern bank of the original Island 76.

Q. How do you know?

A. Because I know it by "personal observation" And in answer to re-cross examination by Mr. Scott, Q. 4, "Island 76 is now a part of the main shore of Mississippi, isn't it? A. Yes sir. Q. 5, And you state none of the original is remaining? A. No sir, that is an ac-retion. Q. 6, What there is now is an ac-retion and is attached to the Mississippi shore? A. Yes but it is attached by ac-retion." Now, whilst you have explained that in your deposition, Mr. Scott was not present to cross-examine you, and I will ask you again to explain those particular answers and state how that occurred, and whether or not they were the true state of facts with respect to Island 76?

A. I explained that in an additional note or whatever you call it, and I swore to it before a notary public, and that is attached to my first deposition, and will accurately explain about those questions and answers. I will refer you to it.

Q. Then if I understand you right Island 76 is not an ac-retion at all to the State of Mississippi?

A. No sir.

Cross-examination.

By Mr. A. Y. Scott:

Q. 1. In 1899 you made the survey referred to and plat, what was the channel of the *of the* river then?

A The channel followed by boats was on the west side of Island 76.

Q. 2. Was that the Mississippi River proper?

A. It was the Mississippi River channel proper at the time of the survey.

Q. 3. In 1899?

A. Yes. sir.

Q. 4. What was the channel of the Mississippi River in 1881 when the original survey was made by the government of which this plat is a copy?

A. From the examination of the records and soundings shown by that plat of 1881, two channels seem to have been existing, one on the east side, and that is the Mississippi side, between the
297 shore of Mississippi and the Island, and the other one between the west side of the Island and the Arkansas bank.

Q. 5. I would ask you to examine the plat where the depth of the river is noted, entirely across the river and just above the head of the island, and state on which side of the island the greatest depth is?

A. The greatest depth of the channel was at the head of the island.

Q. 6. Would that have necessarily meant that the deepest channel was west of the island.

A. No sir, because it is not.

Q. 7. Where did the greatest volume of water run in 1881?

A. West of the island.

Q. 8. The greatest amount of water ran west of the island in 1881?

A. Yes sir, according to that map.

Q. 9. Now, when you say the first line west of the levee line, the first black line west of the levee line in that plat indicates the Mississippi line of the main land?

A. Yes sir.

Q. 10. In 1899 when you made this survey as I understand you in low water there, there was no channel of the Mississippi River between Island 76 and the Mississippi main shore?

A. At the time of my survey the water of the Mississippi River was not flowing through the chute. It was stopped by the existence of a sand bar above this Neblett's Landing.

Q. 11. That means there was no channel to the east of the Island?

A. No flowing channel.

Q. 12. Do you know whether or not the Island 76 occupies now the same position that it did in 1830?

A. I do not, sir.

Q. 13. Do you know whether there has been any caving on the west side of the island—I mean is the island moving east by the caving of the island?

A. Yes sir, the island is moving east by the formation of sand bar surface. I can judge from the ac-retions from December, 1881 to November, 1899.

298 Q. 14. Do you know whether the west bank of the island has moved east or not?

A. The west bank has moved eastward also.

Q. 15. Do you know about how much?

A. I have not got a map here to state how much, but I think some.

Q 16. Have you ever attempted to ascertain how much the west bank of the Island had moved east since 1830?

A. No sir, I have not.

Q. 17. It has moved east?

A. Yes sir.

Q. 18. I will ask you if you place your scales through this copy of Exhibit "D" to Mr. McAndrew's deposition, being the completed plat of Township 21, Range 8 west, and if so, what did you find to be the narrowest point from the Island to the main shore of Mississippi according to that plat?

A. According to the plat by scale it shows the distance between the island and the main shore of Mississippi is at a point between lots 2 and 3 of Section 4, to which scale is as near as I can measure it, in the neighborhood of 530 feet.

Redirect examination.

By Capt. D. E. Myers:

Q. 1. Referring to your last answer, I will ask you whether or not from the map that is exhibited to you wherein you say the shortest distance is 530 feet; from the map itself and the plat itself, can you state that it is absolutely accurate?

A. I can say that the scaling distance between the eastern bank of the Island 76 and the western bank of Mississippi shore, and the point between lots 2 and 3 of Section 4, a distance is accurately scaled about 530 feet. I take for granted this map that is shown me is correct, or accurate.

Q. 2. Is there anything on that plat to show that that distance was ascertained by proper triangulations?

A. No sir, not shown on that, but this map is represented or supposed to be a correct representation of the field notes, and as I have not got the field notes to check by, I must take for granted
299 the field notes are correct, and this map is correct.

Q. 3. You do not know whether the map is correct or not?

A. No sir, I do not know, but I must take it for granted.

Q. 4. In your testimony, then, you take for granted that this map is absolutely correct?

A. I do.

Q. 5. And that the same point in Exhibit A to your deposition, at the same point, it shows 950 feet in 1899, doesn't it?

A. Yes sir, it does about.

Q. 6. And in 1881 about how many feet?

A. About 1,000 feet, or about 1200, 1200 feet.

Q. 7. Now, Mr. Levasseur, in connection with that, is there anything that this map or plat exhibit to you by Mr. Scott indicating the depth of water at that point of 525 feet?

A. No sir.

Q. 8. I will ask whether or not the width of the river at a particular point indicates the volume and amount of water that can pass through that channel without showing the depth of it, in other words can you tell whether it is 30 or 40 feet or 100 feet deep, or how is that?

A. Well, there is no depth shown on the map, and it would be very hard matter for me to state what would have been the depth of the chute at that time, or what would have been the depth in the channel west of the island.

Q. 9. I will ask you whether or not the volume of water passing through there, or that can pass through, a width of 528 feet of water, but doesn't it depend upon the depth of the channel as well as the width?

A. It depends on the depth and the velocity of the stream through that place.

Q. 10. Then unless you know the depth, if I understand you, it would be impossible to tell the volume of water that passed through a width of 530 feet?

A. It is a matter of impossibility to tell what the amount of water passed through a certain place of the river without knowing the depth.

300 By permission, complainant asks the following questions:

Q. 1. I will ask you, Mr. LeVasseur, whether or not there is any difference or distinction between a land surveyor, or sometimes called engineer, and surveyors or engineers running lines of levees, and engineering pertaining to the rivers. If there is any difference, please explain that. I will ask you first if you have read Mr. McAndrew's deposition?

A. No sir, I have not read it.

Q. 2. Is there any distinction between a land engineer or surveyor of lands, and an engineer of a levee board fixing the lines of levees, and the engineering under the Mississippi River Commission, fixing the depths, width, and contour of the banks of the Mississippi from a water stand point?

A. An engineer or surveyor, who call- himself an engineer who has only got his knowledge by experience, and is no graduate of any college, and only experienced in land surveying, and locating levees and constructing levees, is not entitled to be called a civil engineer. A civil engineer is a man who has been to some known college, and had practical experience, and who can place himself in position to be able to solve all the problems of the engineering profession which may be presented to him from running a land line, to the construction of a sky scraper, or bridge or anything. You may judge the difference between the two.

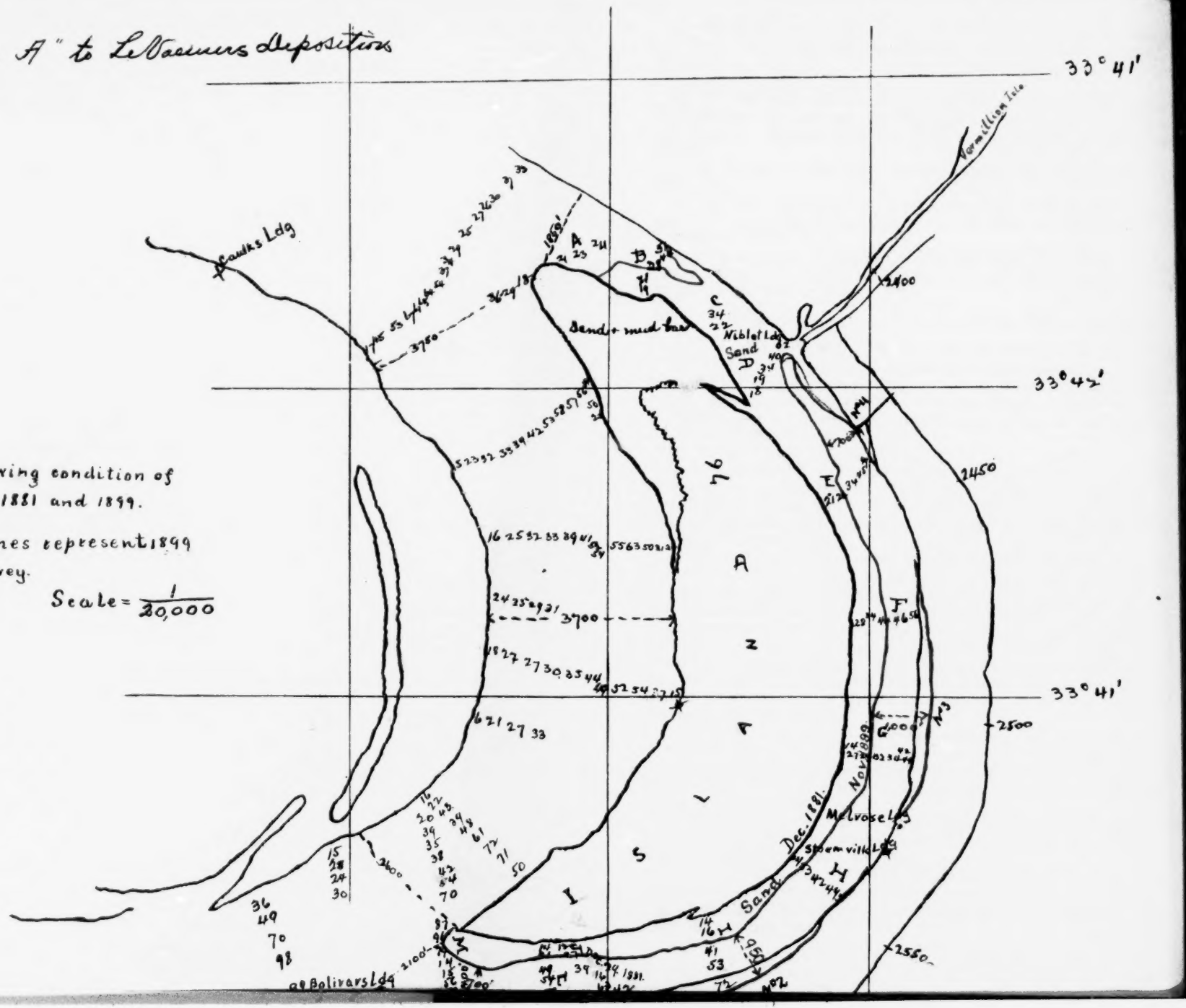
Q. 3. Now I will ask you this, in reference to the particular work of the Mississippi River in its transverses, and soundings and calculations and its shore lines, does it or not require a high degree of engineering ability or a higher degree than that of land surveying and levee contracting?

A. It does. Most of the men employed in government service in the Mississippi River Commission are what I would call civil engineers. They are not land surveyors.

Q. 4. Do you know Mr. McAndrews whose deposition has been given in this case, and if so, how long have you know him?

A. I met Mr. McAndrews several times, and have known him for about four or five years.

Exhibit "A" to LeBaumes deposition

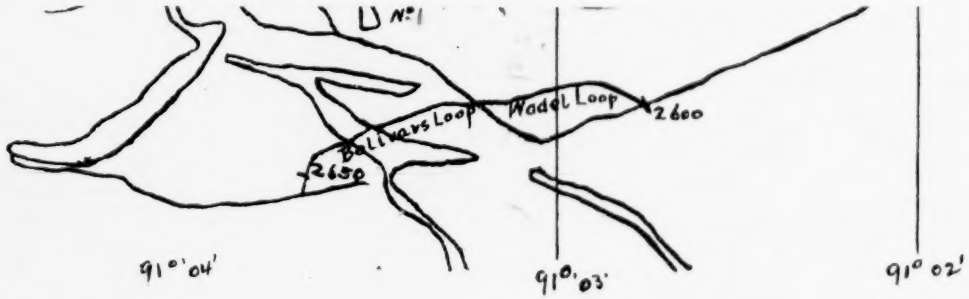


Sketch showing condition of Isl. No. 76 in 1881 and 1899.

Note. Red lines represent 1899 Survey.

Scale = $\frac{1}{20{,}000}$

Moore et al } p. 302
McQuown et al



Q. 5. Do you know about his competency as an engineer?

A. Hold on, you put that pretty close to me. I do not like to run down another man. You asked me if Mr. McAndrews is a
301 civil engineer, I will say no. He may be a competent surveyor.

Q. 6. Do you know where he is now?

A. I do not know where he is. I think he went to the Philip-ines, or intended to go there. I do not know where he went.

Q. 7. Well, now, I will ask you, although you do not want to say anything about a man, I will ask you whether or not he made application to the United States Government as a civil engineer, and what you know about that, and what was the result?

A. I know that Mr. McAndrews made application to come into the service as a civil engineer, and the application is a matter of record and also the result.

Q. 8. Well if you know that result, I will ask you what it is?

A. Well, I will tell you to go to the engineering office and see what it is.

Q. 9. Just tell what it was?

A. He did not pass the examination.

And further deponent sayeth not.

CHAS. LE VASSEUR.

Sworn and subscribed to before me this 11th day of December, 1905.

T. E. MOORE,
Notary Public.

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

(Here follows map marked p. 302.)

303 Mrs. L. M. BURRUS, a witness on behalf of the complainants, being duly sworn, testified as follows:

Q. What is your name, age, place of residence, and how long have you resided in Bolivar County?

A. My name is L. M. Burrus. My age will soon be 79. I now reside in Bolivar County, Mississippi. I came here in 1839 and remained here and stayed here during the winter, and then went back to Alabama, and stayed there two years, and then returned to Bolivar County. I have always lived within a few miles of the same place.

Q. Where did you reside; that is, in what part of the county did you reside, after you returned to Bolivar County from Alabama in 1841?

A. At Neblett's Landing.

Q. How long did you live at Neblett's Landing?

A. I think I lived there until the latter part of 1847, and then I went to Dr. Ross's and stayed there for a while.

Q. Have you seen and are you familiar with the location of Island No. 76, being the island near or opposite Neblett's Landing?

A. Yes sir, I am familiar with the situation and general appearance.

Q. State if you know where the channel of the Mississippi River was, from the time you came to Bolivar County in 1839, until you left Neblett's Landing. That is, on which side of Island 76 was the channel of the Mississippi River located at that time?

A. It was on the east side. The boats passed directly in front of our house.

Q. State whether or not the channel of the Mississippi River was generally regarded there, at the time when you lived near Neblett's or at Neblett's as being on the Mississippi side or on the eastern side of the island as you have just stated.

A. I think it was always considered on this side. I do not think boats could pass up the chute on the other side except in very high water.

Q. What was the usual and only means of communication
304 with foreign parts of the State during that time?

A. Steamboats. But there was a bridle path some time used for horseback traveling across the State.

Q. Where was the chute you speak of located?

A. It was on the other side of the island. On the Arkansas side of the island. The island extended a good deal further up. The island extended not quite as far south as Mr. Storms'.

Q. How was the river on the western or Arkansas side of the island generally spoken of by the people in the community at that time?

A. The chute.

Q. Do you know when the channel of the river changed from the east or Mississippi side of the Island No. 76 to the western or Arkansas side of that island?

A. No sir, I do not. The main body of the river was on this side when the war came on. I had moved back here. I did not live on the Front.

Mr. Scott's Cross-examination.

Q. About how old were you when you first came here in 1839?
A. I was in my 18th year.
Q. Did you come then on a visit?
A. No sir, I came down with my husband to spend the winter on his plantation and remained until spring, and then went back to my home in Huntsville.
Q. And then you returned some time after that?
A. Yes sir, about two years after that.
Q. And then you lived at Neblett's Landing?
A. Yes sir, I did, I lived at Neblett's Landing. My husband owned that tract of land.
Q. When you speak of the chute on the other side of the island were you ever up there?
A. No sir, I never was across the river, except one time, I got in a skiff, and rowed with my husband across the river;
305 partly across.
Q. The reason then you have for saying that the channel was on the Mississippi side of the island is that you saw the boats pass by?
A. Every day, every day, they always passed right by our door. I did not live as far back from the river as that gate.
Q. That was in 1841?
A. No sir, in 1841 up to '49.
Q. You do not know, Mrs. Burrus, of your own knowledge anything about the volume of water on the other side?
A. No sir, I know that it could not be used for the passage of boats except in very high water.
Q. You heard that?
A. No sir, I knew it.
Q. You never were over there.
A. No sir.
Q. You do not know then of your own personal knowledge upon which side the greater volume of water was.
A. No sir, only from what I heard. The boats could not pass there except in very high water. I knew nothing of it personally.
Q. Your memory, Mrs. Burrus, is not as good as it used to be, is it?
A. It is not, I remember things that happened in my youth, but I do not recollect things that happened a few days ago, but the fact of the river, I remember what I have told you perfectly.

And further deponent saith not.
(Signed) MRS. L. M. BURRUS.

Endorsed: Opened and published by order of Court Oct. 5, 1900. W. P. Feild, Clerk.

306 JOHN C. BURRUS, a witness on behalf of the complainants, being duly sworn, testified as follows:

Q. State your name, age, place of residence, and how long you have resided in Bolivar County, Mississippi.

A. Fifty-three years old on the 5th day of September, this month. J. C. Burrus name. Place of residence Egypt Ridge. I have resided on this place. We came here about '51 or '2, am not positive.

Q. Are you familiar with the Island No. 76, opposite or near Neblett's Landing, in the Mississippi River?

A. Yes sir.

Q. How long have you known that island, and are you familiar with it?

A. Well, ever since I was a boy, I have known the island.

Q. State if you know on which side of the Island 76 was the main channel of the Mississippi River, and whether any changes have occurred within your recollection, and when, answering clearly and fully as you can.

A. My first recollection of the island as far back as I recollect it was generally known and understood that the channel was on the Mississippi side, east side. In the fall of 1866 my brother Charles Burrus was merchandising at Melrose Landing on the side of the river, opposite the island, and I was employed to attend to the landing there for several months during that fall. The main channel of the river was on the Mississippi side then. The boats were light draft boats, some times pass up the chute, but no heavy draft boats ever passed up the chute. I attended landing in the fall of 1866 or 1867 at Neblett's for a man named Nelson and kept Neblett Landing. I stayed there and attended the landing about a month. The channel was on this side then, the main channel of the river. Now since that time I do not know when the change took place. My impression is about 1872, but this is not a personal knowledge. When the change commenced, it was a very rapid change. The island is very much further up the river now than it was when I first knew it.

307 Q. While you were engaged as landing keeper or landing clerk at Nebletts and at Melrose, did you have full opportunity of observing the river and of knowing and ascertaining the location of the channel around Island No. 76?

A. I think so, I was on the island several times. I have walked across to the other side. In 1866 or 1867 there was a man named Sterling who lived on the upper end of the island.

Q. What do you know, if anything, in regard to the depth of the water in the chute or of the portion of the river on the western side of Island No. 76?

A. Well, at that time in low water it was a very narrow, shallow, stream. No heavy boats ever passed through it, except in very high water.

Q. What direction were steamers going which passed through this chute on the western side of Island No. 76 in high water?

A. They were going up. Some of them were going both ways.

Q. Do you remember anything in regard to the location of the channel prior to 1860?

A. Well only from a boy's observation. The river was much larger and deeper on this side than it is now.

Q. How was the channel on the western or Arkansas side of the island universally spoken of from the time of your earliest recollection of the river up to about 1870 or 1871?

A. Always spoken of as the chute.

Q. How was the channel on the eastern side of the river generally spoken of during that same period?

A. I do not know. We designated the whole thing as the river.

Cross-examination by Mr. SCOTT:

Q. You have no distinct memory of the river earlier than 1866?

A. Yes sir, I have a very vivid recollection of that several years earlier.

308 Q. About what date?

A. Well the earliest date I can fix positively of the recollection of the river is, I think sir, '57.

Q. How old were you then?

A. Ten years old, sir.

Q. The first you know in regard to what you testified as to the channel of the river was a great many years after that, wasn't it?

A. Well it was to my personal konwledge, yes sir. It was 1866 before I had any personal knowledge.

Redirect examination:

Q. State whether or not you were living from the time of your boyhood until many years after the war, in the immediate neighborhood of the river around Island No. 76?

A. Yes sir, if you call this, immediate neighborhood.

Q. How far is this point from the channel around the island?

A. I judge about three miles by the road.

Q. State whether or not you had frequent occasion from 1857 until 1866 of seeing the river and of the steamers passing up and down that stream.

A. Well I can tell you. When I was a boy after '57 that I was frequently sent out to the river after the mail where Storms' old store was (Old Bolivar). I was frequently sent out there by my father and passed down the levee. During the war I think it was in 1864 I was placed on picket at Bolivar for some several weeks.

Q. During the war, state if you know, on which side of the island the fleets and federal boats passed.

A. In '63 or '64 I was placed on picket at Bolivar at the lower end of Island No. 76. I was placed there for the purpose of ascertaining the number of troops that went down the river, and the boats passed on this side. The water was low at that time.

And further deponent saith not.

(Signed) J. C. BURRUS.

Endorsed: Opened and published by order of Court Oct. 5, 1900. W. P. Feild, Clerk.

309 CLAUDE H. MOORE being first duly sworn testifies as follows:

Direct examination by D. E. MYERS:

Q. 1. Please state your name, age, residence and occupation.

Ans. My name is Claude H. Moore, 31 years old, am general manager for Moore & McFerren, Memphis is my place of residence.

Q. 2. What connection have you with the firm of Moore & McFerren, and how long have you been so engaged?

Ans. I am general manager for Moore & McFerren, have been with them 13 years. 8 of it as general manager.

Q. 3. State whether or not you know anything about the purchase by Moore & McFerren of Island No. 76, in the Mississippi River opposite Bolivar County, Mississippi. State when the purchase was made and from whom.

Ans. I closed the trade for Moore & McFerren with Judge Murphy's widow, Sallie H. Murphy, in Little Rock. This trade was started August 12th, 1898 and was closed August 22, 1898.

Q. 4. Will you please file herewith as exhibit "A" to your deposition the deed from Sallie H. Murphy to Moore & McFerren to the Island and make it a part of your deposition?

Ans. Yes sir.

Q. 5. Please state whether or not Moore & McFerren after purchasing the said island took possession of same and how and when and all about it.

Ans. Very shortly after the Island was purchased by Moore & McFerren we put Mr. O. L. Sanders in charge of it for Moore & McFerren, getting out logs and timber and looking after the Island for us. Mr. Sanders went ahead, cut hauled and delivered several hundred thousand feet of the logs during that year. He left the island sometime close to the first of January, temporarily to go back upon Arkansas River, because the island was wet and muddy. In the mean time he had left some logs and timber that he had cut on the island that he was unable to haul out on account of the mud. Along about August 1899 he returned to get the balance of the logs out. While he was gone I went to the island on the Steamer
310 Kate Adams and put Mr. G. W. Orton in charge of the island for Moore & McFerren, to look after the sawed logs and property there, to keep anyone from molesting the property. Mr. C. W. Orton remained in charge of the island up till a receiver, J. S. Ross took charge of said island. We were paying Mr. Orton $25.00 per year for his services. Mr. Orton had a job with the government also, and lived on the island so that he could look after the property without any trouble. He had a job with the government attending to the lighting of the lamps as the government requires him to keep them lit every night.

Q. 6. At what date in 1898 did Moore & McFerren take possession of that island and place Mr. Sanders there to cut and ship logs?

Ans. It was very shortly after the contract was made, it was August 12th, 1898, I should say two or three weeks later, which would be about September 1st, 1898.

Q. 7. State whether or not if, from about the first of September, 1898, when Moore & McFerren first took possession of the Island, they have been in possession since that time.

Ans. Yes sir. They have had it in possession continuously since or from the time Mr. Sanders was first put on the island till the Receiver, J. S. Ross took charge of it.

Q. 8. Was it the Receiver J. S. Ross in this cause?

Ans. Yes sir.

Q. 9. When you say Mr. Sanderson left the island about January 1899, state whether or not there was any property of Moore & McFerren there, besides the island itself State if there were any property of Moore & McFerren left on the island. State if there were any logs already cut, skiffs, boats, foundations for tents barns or what?

Ans. There was left on the island a skiff, and five or six hundred logs ready to haul, all the frame work for the barns and tent excepting the flies were there. We used cloth flies to go over the frame work that we left on the island.

311 Q. 10. You spoke of having employed Mr. C. W. Orton to take care of the island and property for you during a temporary absence of Mr. Sanders. Please state what was the occasion of your logging camp removing from the island in the spring of 1899, where it was removed and for what purpose.

Ans. Then it was muddy on Island 76, and we wanted to get out some logs up on the Arkansas River.

Q. 11. At what date about did you return to work on Island 76?

Ans. Sometime the latter part of July or August 1899.

Q. 12. Was there any party left there in charge of the island after Moore & McFerren moved their camp from island 76 to Arkansas River, in the spring of 1899, if so, who was it?

Ans. Mr. C. W. Orton was in charge all the time for Moore & McFerren.

Q. 13. State whether or not O. L. Sanders was agent down there during 1898 and 1899.

Ans. Yes sir he was put in charge of the island for us. Mr. Sanders also had a man by the name of Palmer Wilson that he left in charge of the island for Moore & McFerren.

Cross-examination of same witness by A. Y. Scott:

Cross Q. 1. When did you first go on Island 76?

Ans. On the 13th of Aug. 1898, one day later than this agreement.

C. Q. 2. You made that agreement and purchase with Mrs. Sallie Murphy did you not?

Ans. We made it with Mr. H. G. Martin who acted for Mrs. Murphy.

C. Q. 3. How long did you remain on the island at that time?

Ans. We stayed there one or two days.

C. Q. 4. When did you go back to the island again?

Ans. I was back and forth several times, but at just what dates I could not tell you.

C. Q. 5. When was the first time after August 13th, 1898 that you were back on the island.

Ans. I was there at a time which was between the first of September and the time that Mr. Sanders left, just what dates I
312 can't tell. I was there also on the island after Mr. Sanders left and put Mr. Orton in charge of the island.

C. Q. 6. How long did you remain each of the times that you went to the island between August 13th, and the time that Mr. Sanders left the island.

Ans. I remained over night excepting the time when I put Mr. Orton in charge. At that time I went up on the Kate Adams and talked to him while the boat was there and came back on the Kate Adams.

C. Q. 7. What date was it that Mr. Sanders left the island?

Ans. Somewheres about January 1st. Just exactly what date I don't know.

C. Q. 8. When were you next on the isalnd after January 1st?

Ans. I was there in the spring.

C. Q. 9. How long did you remain there then?

Ans. That was the time that I went up on the boat, saw Mr. Orton and remained on the boat talking to him while it was unloading some freight and then came back to Memphis.

C. Q. 10. Do you remember the date in the spring?

Ans. I imagine it was along about April or May.

C. Q. 11. How was it then that you in your original examination stated that you went up there sometime in August and put Mr. Orton in charge?

Ans. I did not state that. If I did, I didn't understand the question. As Mr. Sanders was in charge at that time, and I thought that that was what I was answering.

C. Q. 12. You spoke of frame work for barn and tent you mean just such frame work that is usually put up by wood cutters do you not?

Ans. I will describe them a little. The tent's frame work or rather the tents were floored in and walled up to about four or five feet high, and poles were put up over which to throw the fly for a roof. The barn was a frame work of poles so as to hold up the cloth part of the roof, and the stalls and mangers were made out of poles,
313 posts, and other stuff.

C. Q. 13. The island then remained without being in the possession of any one so far as Moore & McFerren are concerned from January the 1st, or thereabouts, the time that Mr. Sanders left to the time that Mr. Orton was put in charge?

Ans. No sir. Mr. Wilson was in charge also.

C. Q. 14. What is his name?

Ans. Palmer Wilson.

C. Q. 15. When did Mr. Palmer Wilson leave the island?

Ans. He left the island about 60 days ago.

C. Q. 16. Who was in charge of the island then for Moore & McFerren between January and August according to your statement, Mr. Wilson or Mr. Orton?

Ans. Both of them. We paid Mr. Orton though. These boys are living on the island, or were at that time, and we simply asked them to look after it for us, and we paid Mr. Orton for his trouble. Palmer Wilson never asked for any money.

Redirect examination by D. E. MYERS:

Q. 1. In your cross-examination you have been asked in regard to the employment, of Mr. C. W. Orton to hold possession of the island for Moore & McFerren and to look after the cut logs, timber, skiffs, etc, as well as the foundation of the stable and tents. Please state whether or not you have a letter or any communication from Mr. C. W. Orton in regard to his employment and the payment therefor, and in this connection please examine the letter here shown you dated Bolivar, Mississippi, November 27, 1899 to Mr. Moore. State in whose handwriting that letter is, whether you know the signature or not, and mark that letter Exhibit B. to your deposition.

Ans. Yes, it is a letter from Mr. C. W. Orton pertaining to the contract that I made with him, also to the payment of his services. It is in Mr. C. W. Orton's handwriting and it is his signature.

314 Q. 2. Is that the same C. W. Orton that you left in charge of the island?

Ans. Yes sir.

Q. 3. I also hand you another letter dated Bolivar, Mississippi, purporting to be from C. W. Orton in regard to the same matter, and to the payment for his services in watching the island and timber thereon, etc., please state in whose handwriting this is, whether you know it, and whose signature is attached thereto, and whether he is the same C. W. Orton whom you employed on the island.

Ans. It is in the handwriting of C. W. Orton, and is his signature and is from him And it is the same C. W. Orton who was employed to watch the island.

Q. 4. I also hand you a check dated Memphis, Tenn., 12/19/99, payable to the order of C. W. Orton for $25.00 on the First National Bank of Memphis, signed Moore & McFerren per C. H. M., on the back of which is indorsed, C. W. Orton, please state what that check was for.

Ans. This $25.00 check as above described was to pay C. W. Orton for his services for one year and for the time he was in charge of watching Island 76 for Moore & McFerren.

Q. 5. Whose signature is on the back of that?

Ans. Mr. C. W. Orton, the man that I had in charge of Island 76.

Q. 6. State whether or not that check was paid?

Ans. That check has been cashed through the First National Bank of Memphis, Tenn., and paid.

Q. 7. Will you please mark that check exhibit "D" to your deposition?

Ans. Yes sir.

Q. 8. Do you know where Mr. Orton is now?

Ans. Yes sir. I have a letter dated October 23, 1901, from Mr. C. W. Orton at Marysville, Idaho, stating that he was in the employ

of the American Land Co., of Pocatello, Idaho, and that he would be there for the next thirty days.

315 Q. 9. Do you know where he is now?

Ans. I don't know any further than that letter states.

Q. 10. Please mark that letter Exhibit E. to your deposition.

Ans. Yes sir.

Q. 11. Did I understand that when Mr. Sanders left the island he left Mr. Palmer Wilson in charge of it for Moore & McFerren?

Ans. Yes sir.

Q. 12. And Mr. Sanders was the agent of Moore & McFerren?

Ans. Yes sir.

Further deponent saith not.

CLAUD H. MOORE.

Indorsed: Opened & published by rule of Court, Dec. 11, 1901. W. P. Feild, Clerk.

For Exhibit "A" to this deposition see Folio 52 this Record.
For Exhibit "B" to this deposition see Folio 247 this Record.
For exhibit "C" to this deposition see Folio 248 this Record.
For Exhibit "D" to this deposition see Folio 246 this Record.
Exhibit "E" to this deposition is as follows:

MARYSVILLE, *Idaho*, 10/23/01.

Moore and McFerrin, Memphis, Tenn.

GENTLEMEN: Your favor of the 10—14 inst. received today after being forwarded from Ortonville, Minn. In reply will say that I am sorry that I am so far from a Ry. (23 miles) or I would wire you as directed in letter As it is I will drop you a few lines so that you in the future will have my address. A letter will reach me at any time directed to American Land Company of Pocatello, Idaho, J. H. Brady, Prest.

I will be at this place for the next thirty days, and will be glad to serve you at any time.

Very truly yours, C. W. ORTON.

316 O. L. SANDERS being first duly sworn testifies as follows:—

Direct examination by D. E. MYERS:

Q. 1. Please state your name, age, occupation and place of residence?

Ans. My name is O. L. Sanders, 29 years old, and I am agent for Moore & McFerren at Luxiroa, Ark.

Q. 2. Are you acquainted with Moore & McFerren and if so, how long have you known them?

Ans. I have been doing business with Moore & McFerren for the last seven years.

Q. 3. What, if anything, did you have to do with Island No. 76 in the Mississippi River in controversy in this case?

Ans. Moore & McFerren sent me to Island 76 in September or

October 1898 to cut and deliver logs and timber on the island to Arkansas City.

Q. 4. Was that the date you went to Island 76?

Ans. Yes sir.

Q. 5. State what you did from September 1898?

Ans. Went to the island to cut and haul timber.

Q. 6. Did you cut and haul, or raft much timber?

Ans. We cut and hauled several hundred logs.

Q. 7. Now give me what date you went there for Moore & McFerren to cut this timber and what date you left there.

Ans. We went there either in September or October 1898, and left there January or February 1899, I don't know when it was exactly, either January or February.

Q. 8. What was the occasion of your leaving that island at that time in January or February, 1899?

Ans. We quit hauling timber on the island for the reason that there was plenty of water in the Arkansas River to get logs out, and we wanted to leave the logs on the island for lower water, it was muddy on the island and we left there.

Q. 9. At that time did you leave the island permanently or temporarily?

Ans. Only temporarily.

317 Q. 10. Was it or not the intention of Moore & McFerren to return to the island when you left it? Return to Island 76?

Ans. Yes sir. We were to return just as soon as we got the logs off Arkansas River and we did.

Q. 11. When you left Island 76 in 1899, whom if any one, did you leave in charge and possession of the island for Moore & McFerren?

Ans. I left Mr. Wilson in charge of the island. I told him when I left to look after the timber that was cut, and to look after the other stuff which I left there, and to take care of it, and to write me how everything was getting along.

Q. 12. Did he or not write you then?

Ans. Yes sir, he wrote to me several times whilst I was away from the island.

Q. 13. Have you any of those letters?

Ans. I do not think I have.

Q. 14. Do you know whether or not Mr. Wilson took care of the island from the time you left in January or February, 1898, till you returned to the island?

Ans. Yes sir, he was on the island all the time; and he kept charge of the island.

Q. 15. Do you know whether or not Mr. Orton managed there?

Ans. Mr. Wilson told me that Mr. Orton stayed there with him, and Mr. Orton told me that Mr. Moore came there and told him to look after the island.

Q. 16. At what date did you return to the island and for what purpose?

Ans. We went back to the island in July or August 1899, for the purpose of cutting and hauling the rest of the timber and logs we had cut.

Q. 17. Were you the agent and representative of Moore & McFerren all this time?

Ans. Yes sir.

Q. 18. What property of Moore & McFerren in the way of logs cut, rafters, barns or skiffs or the foundations of houses or barns,
318 or anything else did you leave on the island when you left?

Ans. We left several hundred logs on the island, and we left a skiff also, and also foundations of our tents and corral house.

Q. 19. What do you mean by corral house?

Ans. Barns for the stock.

Q. 20. Describe the frame work of the barn?

Ans. The frame work of the barn was posts set down, and poles nailed up and rafters put in to hold up the fly to cover the stock.

Q. 21. Describe the tent arrangement?

Ans. The tents were walled up with planks, three or four feet high, posts set in the ground and planks nailed around them, and the tents were set on top of this.

Q. 22. If I understand you then, all you had to do when you returned was to spread the tents over your frames and you had your houses again completed.

Ans. Yes sir.

Q. 23. State whether or not you or your man were in charge and possession of the island in and about September 1898 until the Receiver who was appointed in this cause took charge of it.

Ans. Yes sir, we were in charge of the island all the time for Moore & McFerren.

Q. 24. Please state whether or not either yourself or the man you had left there for that purpose, were on the island and in possession of it all the time for Moore & McFerren from September 1898 until the receiver took charge in this case.

Ans. They were, yes sir. We were.

Q. 25. Have you any interest in this law suit whatever?

Ans. No sir.

Q. 26. When you returned there in July or August 1899 did you find the foundation of the tents and the frame work and the stables all there?

Ans. Yes sir. All there.

Q. 27. And the logs you had previously cut all there?
319 Ans. Yes sir. All there.

Cross-examination by A. Y. SCOTT:

Cross Q. 1. Do you know Mr. C. L. Jones?

Ans. Yes sir.

C. Q. 2. When did you first meet him?

Ans. I met Mr. Jones either in July or August, 1899.

C. Q. 3. Under what circumstances?

Ans. Mr. Jones was on the island when I met him.

C. Q. 4. You don't remember the date?

Ans. No sir. I don't.

And further deponent saith not.

O. L. SANDERS.

Indorsed: Opened & published by rule of Court Dec. 11, 1901. W. P. Feild, Clerk.

320 The following depositions were introduced and read on behalf of the defendants at the final hearing of this cause.

321 HUBERT WILSON, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination:

Int. 1. State your name, age, residence and occupation.

A. Hubert Wilson; age 29; Rosedale, Mississippi; Clerk.

Int. 2. State where you lived in August and September, 1899.

A. I lived in Rosedale, Mississippi.

Int. 3. State whether or not you know where Island 76 in the Mississippi River is, and whether you have ever been on said Island; and if you shall answer yes to this question, then state when, and under what circumstances, and in what capacity you went on said Island.

A. Well, I know where it is, and I went to Island 76 in September, about September 22nd, 1899, in the capacity of deputy sheriff.

Int. 4. What did you go there to do, and what did you do after you arrived there?

A. I went there to take possession of the timber that had been hauled and left on the bank, and also that had been rafted in the river, and attached the timber—levied on it.

Int. 5. State whether or not you did levy the replevin writ on the timber.

A. I did, yes, sir. Let me correct that, Mr. Scott. I said I levied this writ. Mr. L. E. Edwards went down with me and served the paper or made the replevin himself. He was the office deputy there at that time and he served the writ himself, and left me in charge.

Int. 6. At whose instance was the writ of replevin issued and against whom, if you remember?

A. At the instance of Mr. R. J. McGuire against Moore & McFerrin.

Int. 7. After the writ had been levied, as testified to by you, and you were placed in possession of the timber, state whether
322 or not you remained on the island; and if so, about how long?

A. I stayed there until about the last of November from September 22nd.

Int. 8. Where did you stay when on the island and with whom?

A. I stayed with Charley Jones, Palmer Wilson and his father.

Int. 9. State whether or not when you first went on the island, you met a man by the name of C. W. Orton?

A. I did.

Int. 10. State whether or not you ever had any conversation with the said Orton and in the presence of others relative to Mr. Jones taking possession of the island, and what Mr. Orton said at the time, so far as you can remember.

A. Well, I saw Mr. Orton when I first went there in September at Jones' camp and there had been, you might say, some excitement on the island trying to keep off trespassers, and I heard frequent conversations at the tent there at night and during the day, and the position that Mr. Orton always took was that he seemed anxious to keep the parties off the island, and Mr. Orton always took pleasure in telling of the part he had played trying to keep these parties off.

Int. 11. State whether or not at that time Mr. Orton ever pretended to have been in possession of Island 76 for Moore & McFerrin or any one else.

A. He did not.

Int. 12. State how long Mr. Orton remained with you and Mr. Jones and the Wilsons.

A. He stayed there possibly four or five days after I went down there—about that long.

Int. —. Did he then leave?

A. Yes, sir.

Int. 13. State where he went.

A. He went to Mr. Saunders' camp about 200 yards below us.

Int. 14. State whether or not you ever saw Mr. Orton again after he left the camp and went over to Mr. Saunders?

A. Yes, sir, I saw him frequently.

323 Int. 15. Did you ever have any further and other conversations with him?

A. Yes, I did; about four or five days after he moved down there—he left us and went down there to go to work for Saunders, or to see if he could get work down there; and about four or five days he came up to the camp to move some little traps he had there down to Mr. Saunders' camp.

Int. 16. State what, if anything he said in these conversations you had with him after he had moved down to Saunders' camp, relative to the island, and his holding possession there.

A. Well, I heard him state, after he had been down there—it was possibly two weeks after he had gone to Saunders' camp—he came very often from Saunders' camp up there, and we would set out and talk for a while. One night we met Orton out there and he stated that he had been in possession of the island for several months for Moore & McFerrin, and they had agreed to pay him $10.00 a month to hold possession of the island.

Int. 17. State whether or not you ever heard this stated to anyone, on the part of Mr. Orton, prior to his going to Saunders' camp.

A. I did not.

Int. 18. State whether or not it was a fact from the conversations you have retailed with Mr. Orton, prior to his going to the camp that you understood he had assisted to hold possession of the island, against all trespassers.

A. I heard him state frequently that he had helped Mr. Jones hold possession of the island.

Int. 19. State whether or not the shoot between Island 76 and the main shore can be crossed on foot, or horseback, at a low state of water.

A. Yes, it can be crossed at any place, while it might be possibly a short distance on that shoot that cannot be crossed on foot at a low stage of water. There is a deep hole in it at one place, but I think it is about three miles long and you can cross it at most any place on foot.

324 Cross-examination by D. E. MYERS, counsel for complainants:

Cross-Int. 1. You have stated that after Mr. Orton went to work for Mr. Saunders he told you and Mr. C. L. Jones that he had been placed in charge of the island by Moore & McFerrin, and that they were to pay him $10.00 a month for that service.

A. Yes, sir.

Cross-Int. 2. That he also stated in that conversation that he was to take charge of the island and protect any property or logs, or any property left on the island.

A. No, sir, he did not. He just stated that Moore & McFerrin had agreed to pay him $10.00 per month to hold possession of the island.

Cross-Int. 3. You say in low water you can walk or ride across the shoot?

A. Yes, sir.

Cross-Int. 4. Do you mean of this date? What do you mean, that is say later, or do you mean now?

A. Yes, it was that way in September, 1899; I rode across it; in fact, I have walked across it a hundred times, I guess.

Cross-Int. 5. You say September, 1899?

A. Yes, sir.

Cross-Int. 6. Were you ever on that island before that time?

A. Never was, no, sir.

Cross-Int. 7. Never lived near it?

A. No nearer than here.

Cross-Int. 8. You don't know on which side the island the main channel was in 1817, 1847 and 1878?

A. No, sir. In 1878 I should say it was where it is now. The growth of timber——

Cross-Int. 9. I am asking you of your own knowledge.

A. No, sir, I do not.

Cross-Int. 10. You stated that you and the deputy sheriff levied a writ of replevin on the logs that Moore & McFerrin had cut on the island, and also on the raft of logs in the river.

325 A. Yes sir, only the logs that had been hauled. I think there was from 60 to 80, and something like 300 logs in the river that they had rafted.

Cross Int. 11. You took them out of the possession of Moore & McFerrin?

A. Yes sir.

Cross Int. 12. The writ was levied at the instance of R. J. McGuire for the defendants, was it not?

A. Yes sir.

Cross Int. 13. And other defendants in this suit?

A. I suppose so; I understood it was at the instance of Mr. R. J. McGuire.

Cross Int. 13. Mr. Charles Scott, attorney, had it done, did he not, as attorney for the defendants?

A. Could not say; I only had my dealings with the sheriff.

Cross Int. 14. I say Mr. Charles Scott as attorney.

A. Yes sir, I think so.

Cross Int. 15. How long did you hold possession of that raft in the river?

A. Until November some time.

Cross Int. 16. What became of that raft of saw logs?

A. Moore & McFerrin gave bond for it and sold it.

Cross Int. 17. Is it not a fact that that raft was sunk while still in your possession?

A. No sir, it is not a fact.

Cross Int. 18. You don't know whether it was afterwards sunk or not then?

A. No sir, I do not.

Cross Int. 19. The raft was in pretty bad condition when you left there, was it not?

A. Short strong of it, yes sir.

Cross Int. 20. When you left they were all rafted out, were they not, and ready to move?

A. No sir, they only had about 300 logs rafted; I suppose something like 80 or 100 were not.

326 Cross Int. 21. Do you mean logs that were not rafted?

A. I do.

Cross Int. 22. Do you know exactly how many?

A. Yes sir.

Cross Int. 23. How many?

A. The writ will show.

Cross Int. 24. The writ will show the number?

A. Yes sir, the writ will show the number of logs in the river.

Redirect examination by A. Y. SCOTT:

Int. 1. You don't know whether any defendant in this case, except Mr. R. J. McGuire, was the complainant in that replevin writ.

A. No sir, I do not; I think he was the only one.

Int. 2. It was your understanding that he was the only one?

A. Yes sir.

Int. 3. You don't know whether Mr. Scott or O. G. McGuire represented him as attorney?

A. No sir, I do not.

Int. 4. In fact, you don't know who his attorneys were.

A. No sir.

Int. 5. Mr. Wilson, did you see the tents and corrals erected by Moore & McFerrin on the island while you were there?

A. Yes sir.

Int. 6. What kind of tent and corrals was it?

A. It was a newly erected concern; the tents were put up, none of them floored; I think one or two of the tents had a baseboard around at the bottom of the tent. The corrals were, you might say, a roughly

constructed arrangement, just a few cottonwood poles nailed up and spiked up—a place to keep their mules and feed, and fly thrown over it.

Recross-examination by D. E. MYERS:

Cross Int. 1. Who were the names of the plaintiffs in that
327 writ of replevin?

A. I don't think there was anyone except Mr. R. J. McGuire; that is my recollection now.

Cross Int. 2. Where is that writ?

A. I think it is in the Circuit Clerk's office.

Cross Int. 3. Can you look at that and refresh your memory and tell me now or this afternoon, or this evening who they were?

A. Yes. (Here witness goes for writ and returns, after which he testifies as follows.) I have examined the papers and find that they were issued at the instance of R. J. McGuire, who was the sole complainant.

Cross Int. 4. Now state, after refreshing your memory, how many logs and what property you levied on and took possession of under that writ.

A. I levied on 60 logs on the bank, and 350 in the river, and 800 in the woods.

Cross Int. 5. These 800 logs in the woods had been cut ready to haul, had they not?

A. Yes sir.

Cross Int. 6. When you say logs you mean saw logs, do you not?

A. Yes sir.

Redirect examination by A. Y. SCOTT:

Int. 1. State, by referring to the writ, at what the logs were valued on said writ.

A. $1415.00.

Int. 2. Itemize the value.

A. 60 logs on the bank valued at $90.00; 350 logs in raft valued at $525.00; 800 logs in woods on said island valued at $800.00.

Int. 3. State whether or not, when you went to the island, Mr. Wilson, there was a force cutting there at the time.

A. Yes sir, there was.

Int. 4. State whether or not that all of the logs levied on
328 by you and returned in this writ were newly cut lots.

A. They were.

Recross-examination by D. E. MYERS:

Cross Int. 1. Did you examine each log in the woods to see whether it had been cut recently, or whether it had been cut in the spring?

A. No sir, I did not examine them closely for that purpose. I was through the woods there and examined timber in the woods and know the old logs. You would just find one occasionally that was in a bad place, and could not be gotten to the wagons, and possibly they would — all around it, and the way they had thrown the trees they could not get to the logs, and they just left the logs; all the old timber I found in the woods.

Cross Int. 2. You found some old timber in the woods, did you?

A. Some few old logs in the woods.

Cross Int. 3. Can you tell how many?

A. No sir, I cannot state exactly.

Cross Int. 4. Now as to the raft, how can you tell whether all the logs in the raft had been just recently cut, or whether some of them had been cut in the spring of that year?

A. Well, it is a very easy matter for a man to tell if he knows anything about cottonwood timber whether it had been recently cut or whether it was old timber.

Cross Int. 5. Timber that was cut in the spring of the same year would not be old timber, would it?

A. No sir, it would not be exactly old, but it would be a very easy matter to tell it, however.

(Signed) HUBERT WILSON.

Endorsed: Filed May 22, 1902. W. P. Feild, Clerk.

329 ANDERSON HENCE, colored, a witness on behalf of the defendants being called, and after being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. Anderson Hence, age 27; residence Neblett Plantation, farming.

Int. 2. Where did you live Anderson during the spring, summer and fall of 1899?

ANDERSON HENCE: Where did I live?

Mr. SCOTT: Yes.

A. At Caulk's Point, State of Arkansas.

Int. 3. How far is Caulk's Point from Island 76 in the Mississippi River?

A. It is about 2½ miles near as I can tell.

Int. 4. Have you ever been on Island 76?

A. Yes, sir, lots of times.

Int. 5. State whether or not you were on Island 76 any time during the spring, summer or fall of 1899?

A. Yes I was there, once and twice a week, most all the time.

Int. 6. State whether or not you know Mr. C. W. Orton, and how long you have known him?

A. Mr. Orton and I were good friends, and I knowed him a year, probably a year and something over a year, and he staid at my house lots of times, eat and drink there, and him and I worked together; him and I was real good friends.

Int. 7. State whether or not Anderson, Mr. Orton was in charge of the Government Light on Island 76?

A. Mr. Orton was not in charge of it. Mr. Palmer Wilson a young gentleman at Eutaw had the light in charge.

Int. 8. State who had charge of the light prior to Mr. Palmer Wilson's taking charge of it?

WITNESS: Before?

Mr. SCOTT: Yes.

330 A. I had charge of the light. Exactly I did not have charge of the light, but was hired to attend to the light before Mr. Palmer Wilson taken it. I was hired by —— who lives down there at Sotrm's place.

Int. 9. State, Anderson whether or not Mr. Orton ever had a conversation with you along in the fall of 1899 relative to Moore & McFerren not paying him for work he had performed at the camp for them, and state what he said in regard thereto.

A. Mr. Orton—him and I was working together; I helped him carry some timber down to Arkansas City; and we was a little short of money and was talking about it—kind of a business matter, and he said he did not have any money right then, and that Mr. Saunders owed him some and would not pay him because he would not say he was in charge of the Island, something of the kind, and he never did get it all up to the last I heard of him. He consulted a lawyer in regard to it when he went down to Arkansas City, and he fell out with them about it and because they wanted him to say that he was in charge of the Island.

Int. 10. I gather from what you say that the trouble was that Mr. Orton was unwilling to testify in this law suit that had been brought about the Island that he had had possession of the Island for them: Is this correct?

A. Yes, that was what he said, and he said that he would not do that because it was not so.

Int. 11. State whether or not Mr. Orton ever had possession of the Island for Moore & McFerren or any one else.

A. He did not; he had no possession of the Island at all, that is what he claimed he did not have possession, because he was on my place there a while, and he went on the bank and cleared up a little tent ground and he caught some lumber, and took it in down there at Bolivar, and got my brother to go down there and help him drag the lumber up on my place. At the time he was living on my place. If he had the Island in charge he would not say anything.

331 Int. 12. He never said anything to you about having possession of the island, although you were such good friends?

A. No, sir.

Int. 13. State whether or not the shoot between Island 76 and the main land of Mississippi, in a low state of water is dry and can be walked across and ridden across.

A. It can be ridden across sometimes yes sir.

Int. 14. Can you not walk across it when the water is low?

A. I never seen any one walk across it; I have seen them ride across it.

Cross-examination by D. E. MYERS:

The complainants by counsel specially reserving exceptions to all that part and parts of the foregoing deposition, which relates to conversations had between the witness and C. W. Orton as incompetent and irrelevant, as not being in the presence of any of the complainants and because hear-say. Waive cross examination.
ANDERSON HENCE.

Indorsed: Filed May 22, 1902. W. P. Feild, Clerk.

332 E. H. NALL, a witness on behalf of the defendants, being duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him deposes as follows:

Direct examination by A. Y. SCOTT:

Int. 1. Please state your name, age, residence and occupation?
A. E. H. Nall; age 52; State Land Commissioner; Jackson, Mississippi.
Int. 2. State what records and other documents relative to the State lands you have under your custody and control as State Land Commissioner.
A. All records pertaining to State lands except the assessment rolls.
Int. 3. When was the State Land Office created, Mr. Nall?
A. By the Act of the Legislature of 1892.
Int. 4. Please examine the book in your office designated as "Tract Book, Swamp Lands, Grenada District, Commissioner of Swamp Lands," and state what that book contains.
A. It contains a record of the patents issued by the State of Mississippi to individuals of the swamp lands in the Grenada District, under Act of Congress of 1850, known as the General Swamp Land Act.
Int. 5. Please examine said record and ascertain whether or not the State of Mississippi ever issued a patent to all of Section 36, Township 21, Range 8 West, and all of Section 37, Township 21, Range 8 West, and if such patent was ever issued by the State please file with your deposition a certified copy of the record thereof, marking same as "Exhibit A" hereto for identification.
A. The record shows that the above land was patented by the State of Mississippi to W. G. Ford, January 9th, 1854, and I herewith file a certified copy from said record as "Exhibit A" to my deposition.
Int. 6. Please state, Mr. Nall, whether or not as part of the records of your office you have the original field notes of
333 the various surveys made by the Surveyor General for the District south of the State of Tennessee.
A. I have.
Int. 7. Please examine the book I now hand you and state what it contains, and what it is.
A. There are the original field notes.
Int. 8. Of what Township and Range, and of what survey?

A. They are in several Townships.

Int. 9. State whether or not that book contains the original field notes of a survey made by Benjamin Griffin, Deputy Surveyor, from August to October, 1830, of Township 21, Range 8 West in the State of Mississippi.

[8] [17]

A. Book [B] and Book [F]. These two original field book notes contain the original field notes of Sections 36 and 37, Township 21, Range 8 West.

Int. 10. Please file with your deposition hereto, marked as "Exhibit B," a certified copy of the entire field notes of Township 21, Range 8 West. Said certified copy being taken from the original survey above referred to.

A. I file certified copy herewith marked "Exhibit B."

Int. 11. Please state whether or not, Mr. Nall, you have on record in your office an official copy of a map of Township 21, Range 8 West, projected from said field notes of Benjamin Griffin, Deputy Surveyor, certified copy of which you have filed above to your deposition as "Exhibit B."

A. I have said map on file.

Int. 12. Please file with your deposition as "Exhibit C" thereto a certified copy of the map.

A. I file same as "Exhibit C."

Int. 13. Please examine the book I now hand you and state what it is, and whether or not it is a part of the records of your office.

A. State and Levee lands, marked Auditor's Office. De Soto, Bolivar, Coahoma and Issaquena Counties, and it constitutes a part of the records of my office.

334 Int. 14. State in a general way what that book contains.

A. The records of the State lands in Bolivar, De Soto, Coahoma and Issaquena Counties.

Int. 15. Please examine the record above referred to and state whether or not there were sold to the State of Mississippi on the 6th day of March, 1882, for delinquent taxes for the fiscal year 1881 among other lands, all of Section 36, Township 21, Range 8 West, and all of fractional Section 37, Township 21, Range 8 West, and if you should ascertain that said lands had been sold to the State as shown by said record, file with your deposition hereto a certified copy of said record showing said sale, and mark the same "Exhibit D" to your deposition.

A. I find the said sections were sold at that time and I file herewith a certified copy of said sale, marked "Exhibit D" to my deposition.

Int. 16. Please examine said record of State lands above referred to and state whether or not Section 36, Township 21, Range 8 West and Section 37, Township 21, Range 8 West, was ever afterwards sold to the State of Mississippi for delinquent taxes, stating in what year or years it was so sold, and file with your deposition, if you should ascertain that it had been so sold, a certified copy of the records showing same.

A. It appears upon the records to have been sold to the State March

5th, 1894, certified to by the Auditor of Public Accounts on the 15th day of April, 1896, as having passed the date of redemption.

Int. 17. Please file with your deposition as "Exhibit E" a certified copy of said sale of March 5th, 1894, delinquent for taxes of the fiscal year 1893.

A. I file herewith a certified copy of said record marked "Exhibit E" to my deposition.

Int. 18. Please examine the book I now hand you and state whether it is a part of the records of your office, and what it is.

A. It is a part of the records of my office and contains forfeited tax land remaining in the Auditor's office passed the date of
335 redemption and transferred to the State Land Office April 15th 1896.

Int. 19. Please examine said book and ascertain whether or not all of Section 36, Township 21, Range 8 West, and all of Section 37, Township 21, Range 8, was transferred to your office by the Auditor as unredeemed land.

A. It was on April 15th, 1896.

Int. 20. Please file with your deposition as "Exhibit F" thereto a certified copy of said record showing the transfer above referred to.

A. I file a certified copy herewith marked "Exhibit F."

Int. 21. Please examine your records and state whether or not after the transfer of all of Section 36 and all of Section 37, Township 21, Range 8 West from the Auditor's office to yours the State ever disposed of said land or not. If you should find said sale to have been made please file with your deposition a certified copy thereof, marked "Exhibit G" hereto.

A. The record shows the State sold all of Section 36 and Section 37, Township 21, Range 8 West under the description as appears in the certified copy from the records of my office, which I file herewith as "Exhibit G" to my deposition.

Cross examination by D. E. MYERS, of counsel for the complainants:

Cross Int. 1. In "Exhibit A" to your deposition is shown a record of a patent from the State to William G. Ford to Sections 36 and 37, Township 21, Range 8 West. Please state in what county or counties the records show that these lands were situated under said patent. Give each section separate.

A. It does not give the county.

Cross Int. 2. In "Exhibit B" to your deposition you propose to file a certified copy of the survey of Township 21, Range 8 West, state whether or not that exhibit is contained in two separate books.

336 A. Yes sir, it is.

Cross Int. 3. In making up and filing that "Exhibit B" will you please make the books separate, or in other words clearly
[17]
show exactly what appears on book [F]. Make up separately so clearly distinguishable under separate certificate what appears on said
[17] [17]
book [F] and also make up separate and distinct from book [F]

what appears on said book [8] [B]. Make under separate certificate.
A. I will.

Cross Int. 4. State whether or not in book [8] [B] which you have referred to there is not sealed in at the beginning of Township 21, Range 8 West on a separate slip of paper apparently in a different handwriting from the original notes.

A. I should say it was in the same handwriting.

Cross Int. 5. Is there any date to that separate slip of paper?

A. It appears to have no date.

Cross Int. 6. Will you in making up the copy designate specially what is contained on that little slip of paper, and describe the size of it?

A. Yes sir.

Cross Int. 7. Please look at said memorandum book [8] [B] which you propose to exhibit, at the close of the description of Township 22, Range 8 West, or Section 36 and Section 37, Township 21, Range 8 West and state whether or not the following paragraph, to-wit: "Soil very good except a few chs on the latter part," and state whether or not that does not appear in ink blacker and seemingly of a more recent date than the rest of the description.

A. No, sir. I don't see how you would get a more recent date out of that. It is blacker ink, but it does not seem of a later date.

Cross Int. 8. Is not that paragraph in blacker and fresher ink than the rest of the description?

A. It appears blacker, not fresher.

Cross Int. 9. At the end of the description of said property in controversy in said book [8] [B] it does not appear that the Deputy
337 Surveyor Benjamin Griffin signed his name to the end of that survey of Sections 36 and 37, Township 21, Range 8 West

A. It does not.

Cross Int. 10. Please look at the same book at Township 22, Range 9 West, and state whether or not the following does not appear "Finis, Township 22, Range 9 West, 1830 November 1st. (Signed) Benjamin Griffin."

A. It so appears.

Cross Int. 11. Please look on the same book [8] [B] as to the notes on Township 21, Range 10 West and state whether or not at the end of that description Benjamin Griffin, Deputy Surveyor, did not sign his name and also give the chain carriers.

A. It is signed by Benjamin Griffin, Deputy Surveyor and signed by Nathan L. Brown and Samuel McJunkins, chain carriers.

Cross Int. 12. Please look in the same book [8] [B] in the notes as to the survey of Township 21, Range 9 West, and state whether or not at the end of that description Benjamin Griffin signed the same as Deputy Surveyor.

A. It is signed Benjamin Griffin.

Cross Int. 13. Have you any personal knowledge of said book [8] [B] except as you find it in your office when you came into the office that you now occupy?

A. No.

Cross Int. 14. Please look to your Exhibit called for by the defendants from book [17] [F] where it commences, which purports to describe a survey of Township 21, Range 8 West, and state whether or not it is not signed, surveyed by Benjamin Griffin, D. S., January and February 1830.

A. It does.

Cross Int. 15. Please state whether or not you know anything about the authenticity or correctness of your personal knowledge of either of said books [17] [F] or [8] [B] except as you found them in your office before they were turned over to you when you came into your office as State Land Commissioner.

A. No.

338 Cross Int. 16. In your deposition you have made an "Exhibit C" purporting to be a copy of the plat as appears in your office of Township 21, Range 8 West. Please state whether or not you know anything personally about the correctness of that plat, except as appears from your books.

A. I do not.

Cross Int. 17. Do you know at what date that plat book first came into the office of the State Land Commissioner?

A. No sir.

Cross Int. 18. Is there anything on the original plat to show it?

A. No sir.

Cross Int. 19. From the date of the original survey of Township 21, Range 8 West do you know whether or not the plat was subsequently changed? If so, about what date and under whose direction?

A. I do not know.

Cross Int. 20. State whether you know at what date the subdivision of Island 76, as appears on "Exhibit C" was actually made?

A. I do not know the date.

Cross Int. 21. That sub-division was made by the State of Mississippi subsequent to the date of the original survey by Benjamin Griffin, was it not?

A. I do not know.

Re-direct examination by Mr. SCOTT:

Int. 1. Examine the field note book [8] [B] at "Traverse of Island 76," and examine piece of paper attached thereto about which you have been cross-examined by Col. Myers, and state whether or not the paper and writing does not appear to be of the same as the rest of the book.

A. It appears so to me.

[8] [17]

Int. 2. Field notes [B] and [F] constitute part of the records of your office, and you have only the same personal knowledge relative to them that you have relative to all of the other records of this office. Is that not the case?

339

A. Yes sir.

Int. 3. Examine the copy of the map attached to your deposition as "Exhibit C" and state whether or not the entire map and subdivision does not purport to have been approved May 31st 1830, by Joseph Dunbar, Surveyor South of Tennessee.

A. It does.

Int. 4. You should then state that the map in your possession from which that copy is taken as a map was completed as of May 31st, 1830, should you not?

A. It appears so from the record.

Further deponent saith not.

(Signed) E. H. NALL,
Land Commissioner.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

EXHIBIT A.

Township No. 21 N., Range No. 8 West.

Description of tract.				Contents.		Rate per acre.	Amount.	Name of purchaser or locator.	Date of sale.	Scrip.	Date of location.	No. war.	No. ctf.	No. Pat.	To whom patented.	Date of patent.
Part of section.	Sec.	Twp.	Range.	Acres.	Hun.					To what county issued.						
* *	..	21	8 W.	*	*	$ Cts. * *	$ Cts. * *	* *	*	*	*	*	*	*	*	*
(Island 76) the whole of..	36	"	"	674	20	.....	.....	Wm. G. Ford.	..	Tunica & Issaquena.	Jan'y 9, 1854	712 705 6042 & 704	..	..	Wm. G. Ford..	Jan'y 9, 1854
* *	*	*	*	*	*	* *	* *	* *	*	*	*	*	*	*	*	*
(Island 76) the whole of..	37	"	"	234	38	.....	234 38	Wm. G. Ford	..	Coahoma .	Jan'y 9, 1854	3654 3670	..	..	Wm. G. Ford..	Jan'y 9, 1854

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "Tract book" "Swamp Lands" "Grenada District" "Commissioner Swamp Lands" and on page 224 of the said Book.

Given under my hand and official seal at Jackson, Mississippi the 13th day of May A. D. 1902.

[SEAL.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, Clerk.

341 EXHIBIT "B."

District of Mississippi.

Field notes [8/B]

Course.	Distance. Ch.	Lk.

Field Notes of Township No. 22, in Range 8 West in the Choctaw District—State of Mississippi—Surv'd by Benjamin Griffin, Dep. Surv.

1830. T. 22, R. 8 W.

Traverse of Island 76 beginning at the upper end.

St.	Course.		Dis. Ch.	Lks.	
1	S 28½	W.	44	"	Island 76 is in T. 21, R. 8 W & not in T. 22 R 8 W. and that instead Sections 6 & 7 should be Sections 3, 6 & 37 T. 21, R. 8 W. This Island is properly within Township No. 21 in Range 8 West. Distance X the shoot of Island 76 from the beginning of the last St. N. 40 E 2920 intersecting the opposite traverse 26 ch. on the 1st St.
2	S. 38½	W	5.		
3	S 10½	W	73.		
4	S. 28½	W.	22.		
5	S 48½	W	9.		
6	S 38½	W.	17.		
7	S 68½	W	5.		
8	S. 57½	E.	3.		
9	N 82½	E.	27.		
10	N 68½	E	26.		
11	N 58½	E	49.		

NOTE.—This attached piece of paper as attached to the original is 3⅛ inches by 4 inches.

E. N. NALL,
Land Commissioner.

St.	Course.		Dis.	
12	N 38½	E.	32.	Part of the Traverse of Island No. 76. See note on the last page. C.
13	N 10½	E	25.	
14	N 11½	W	20.	
15	N 25½	W	25	
16	N 42½	W	27	
17	N 56½	W	12	
18	West		7.	

* * * * * * *

Beginning at the upper end of * 36 in Island 7656 (Island 76) we ran S. 28½ W. at 30 ch. set a post.

342 Br. Ellum S. 74, E. 128 lks.
trees H. berry S. 41, E. 125 lks.

At 35 ch. center case above highwater mark at 40 ch. set L post.
Br. H. berry S. 77, E. 3 lks.
trees Ellum S 1, E. 4 lks.

---

*Section should be Section 36, T. 21, R. 8 W.

At 44 ch changed the course to S. 38½ W.
At 5 ch changed the course to S. 10½ W.
At 1 ch set L post Br. Sickamore S. 68 E 10 lks.
trees H. berry N. 55 E. 10 lks.
At 11 ch. set L post Br. Elum N 62 E 7 lks.
trees H. berry S. 42 E. 113 lks.
At 21 ch. set L post Br. Ellum N 1 W 107 lks.
trees Gum S. 44 W. 130 lks.
At 31 ch. set L post Br. H. berry N 1 W. 65 lks.
trees Ditto S 69 W 29 lks.
At 35 chs. left the cain.
At 41 ch set L post Br. Hc. berry N 46 E 28 links
trees Ditto S 21 W. 20 lks
At 51 ch set S post Br. Ellum S 4 E 26 lks
trees Hc berry N 13 E 31 lks.

Beginning at the S. W. corner of S. 6, We. E and S 57 E.
At 58 24 set S. post Br. Cottonwood N 68 W. 21 lks
trees Ditto N 6 W. 13 lks.

This line was open woods with vines & briars, in places above high water mark, overflow from 1 to 4 feet, soil good.

Beginning at the S. E. corner of Sec 6, we ran N 58½ E. At 12 ch. changed the course to N 38½ E.
At 7 ch set L. post Br. Cotton N 59 W. 9 lk-.
trees Ditto N 7 W 11 lks.
At 23 ch set L. post Br. Cottonwood S 45 W. 10 lks
trees Willow N 16 W 12 lks.
At 32 ch. changed the course to N. 10½ E.
At 3 ch set L. post Br. Cottonwood N 54 W. 26 lks.
trees Ditto S. 86 W. 32 lks.
At 14 ch set L. post Br. willow S 77 W. 9 lks.
trees Cottonwood N. 30, W 12 lks.

Course.	Distance. Ch.	Lk.	
343			At 25 ch. set L post Br. Cottonwood N 50 W. 9 lks.
			trees Ditto S 83 W 10 lks.

Changed the course to N 11½ W.
At 14 50 set L post Br. Willow S 33 W. 13 lks.
trees Ditto N 68 W. 25 lk-.
At 20 ch changed the course to N. 25½ W.
At 17 50 set L post Br. Cottonwood S 59 W. 27 lks
trees Ditto S 83 W. 24 lks.
At 25 ch changed the course to N. 42½ W.
At 27 ch changed the course N 56½ W.
At 12 ch. changed the course to W.
At 7 ch. closed the S. This line was an open Cottonwood swamp.

The South & East side of this Island is an open Cottonwood swamp—heavy- timbered subject to overflow from 1 to 4 feet. Soil generally good. The north & West side is mostly cain above high water mark, soil very good.

Beginning at the N. W. corner of (# 37 Section 7 should be Section 37 T. 21, R 8 W.) S. 7 W. ran 10½ W.

At 16 ch. set L post Br. H. berry N 56 E. 16 lks.
trees Ditto S 14 E. 18 lks.
At 22 ch. changed the course to S. 28½ W.
At 22 ch set L post Br. Cottonwood S. 59 W. 27 lks.
trees Ash S. 83 W. 24 lks.
Changed the course to S. 48½ W.
At 9 ch. changed the course to S. 38½ W.
At 17 ch changed the course to S 68½ W.
At 5 ch changed the course to S. 57½ E.
At 3 ch. changed the course to N. 82½ E.
At 27 ch changed the course to N. 68½ E.
At 20 ch set L post Br. Cottonwood N 24 E. 4 lks.
trees Ditto N. 88 E. 5 lks.
At 26 ch changed the course to N. 58½ E.
At 21 ch set L post Br. Willows N. 83 W. 34 lks.
trees Ditto N 5 E. 40 lks.

344

Course.	Distance. Ch.	Lk.

At 37 ch closed the S.

The traverse around this S. is mostly open woods, some cain subject to overflow in many places.

Stiff, rich soil.

* * * * * * *

Finis.

T. 22. R 8 W.

1	8	30

October 30.

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the "Surveyor General's Office" do hereby certify that the above and foregoing pages are a true and faithful copy and transcript of and from the said record in so far as it is shown and appears of record, in Field note book "[8][B]" of the original surveys now on file and in my official keeping as a part of the record of the State Land Office. The same is a true and correct copy in every line and figure and in strict conformity with the original

Given under my hand and official seal at Jackson, Mississippi, this 13th day of May, A. D. 1902.

[L. S.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, Clerk.

345 EXHIBIT "B."

Field notes [17] [F.]

Course.	Distance. Ch. Lk.	
1st mile		West Boundary of T. 21 R 8 W. running N.
	40 00	¼ Section post—bearing trees
		Sickamore N 27 E. 94 L.
		Hackberry S 15 W. 32 L.
	80 00	Section post—bearing trees
		Oak N 13 E.
		Elum S 69 E
		Ditto S. 33 W
		Oak N 68 W.
2nd mile		
	30 00	We came to open woods.
	40 00	¼ Section post bearing trees.
		Redbud N 21 E. 74 L.
		Hackberry S 20 W. 12 L.
	80 00	Section post—bearing trees
		Hackberry N 44 E. 4 L.
		Ditto S. 28 E 14 L.
		Ditto S. 29 W. 6 L.
		Ditto N 53 W. 24 L.
3rd mile		
	10 00	left open woods
	40 00	¼ Section post—bearing trees
		Sassafras S 69 E. 20 L X
		Redbud N 28 W 22 L.
	80 00	Section post bearing trees
		Redbud N 33 E 50 L.
		Hackberry S 12 E 40 L.
		Sickamore S 71 W 55 L.
		Hackberry S. 76 W 25 L.
4th mile		
	5 00	Came to open woods
	40 00	¼ Section post—bearing trees
		Hackberry N. 10 E 22 L.
		Ditto S 37 W 12 L.
	60 40	We came to the Mississippi River
		Traverse up the river beginning at the point where the West boundary came to it.

346

Course.	Distance. Ch. Lk.	
St. N.	Course Deg.	Dist. Ch. L.
1	E.	35 00
2	S 84½ E	35 00
3	N. 78½ E.	15 00
4	N. 48½ E.	10 00
5	N 63½ E	45 00
6	N. 43½ E.	15 00
7	N. 58½ E.	35 00
8	N 38½ E	15 00
9	N. 28½ E	20 00 X
10	N — —	60 00
11	N 16½ W	11 00
12	N 31½ W	28 40

1st mile

South Boundary of T. 21 R 8 W. Running E.

31 00 Came to open woods

40 00 ¼ Section post—bearing trees

Persimon N 25 E 16 L.

Ellum S. 45 W. 11 L.

At this place we came to Lake Bolivar.

73 92 Left the Lake.

80 00 Section post bearing trees.

Pawpaw N. 53 E. 33 L.

Box Elder S 61 E 44 L.

Ditto S 64 W 27 L.

Ditto N 84 W. 103 L.

2nd mile

40 00 ¼ Section post—bearing trees—

Ellum S 60 E 3 L.

Ditto N. 30 W 44 L.

57 00 Cross'd an open slew 4 ch. wide.

80 00 A section post—bearing trees.

Oak N. 39 E. 11 L.

Ditto S. 38 E. 56 L.

Gum S 37 W. 37 L.

Ellum N. 14 W. 71 L.

3rd mile

40 00 ¼ Section post—bearing trees

347

Course.	Distance. Ch. Lk.	

Pecan N. 78 E. 40 L.

Persimmon S 26 W. 48 L.

72 00 Came to a Lake

78 00 Left the same.

80 00 Section post—bearing trees.

Ash N 16 E. 15 L.

Hackberry S. 65 E. 29 L.

Persimon S. 39 W. 57 L.

Ditto N 60 W. 15 L.

4th mile

40 00 ¼ Section post—bearing trees.
Ellum N 65 W. 45 L.
Red bud S. 71 E. 17 L.
45 00 Crossed a biough 1 ch wide.
80 00 Section post, bearing trees
Gum N 62 E. 26 L.
Hackberry S. 40 E. 23 L.
Gum S 14 W. 12 L.
Hackberry S 50 W 49 L.

5th mile

25 00 Crossed the strait biough 26 ch. wide X
40 00 ¼ Section post, bearing trees
Pawpa S. 81 E. 3 L.
Red bud N 77 W. 40 L.
69 00 Crossed a biough
80 00 Section post, bearing trees
Oak N. 36 E. 44 L.
Hackberry S. 61 W. 15 L.
Ash S. 86 E. 70 L.
Oak N 31 W. 85 L.

6th mile

40 00 ¼ Section post, bearing trees
Ellum N. 48 E. 33 L.
Box Elder S. 59 E. 9 L.

348

Course.	Distance. Ch. Lk.	
	80 00	T. corner bearing trees
		Hackberry N. 59 E. 21 L.
		Pawpaw S 47 E. 27 L.
		Gum S 21 W. 12 L.
		Oak N. 29 W. 17 L.
1st mile		East Boundary of T. 21, R. 8 W. running N.
	40 00	¼ Section post bear trees
		Hackberry N. 51 W. 22 L.
		Gum S. 8 E. 23 L.
	80 00	Section post. br. trees.
		Gum N. 74 E 91 L.
		Oak S. 15. E 46 L.
		Ellum S. 56 W. 28 L.
		Hackberry N 9 W. 14 L.
2nd mile		
	40 00	¼ S. post br. trees
		Ash S. 22, E. 45 L.
		Ellum N. 38 W. 63 L.
	72 00	Crossed a biough—50 L. wide.

[On the margin, in pencil:] W. B. T. 21, R 7 W.

80 00 S. post br. trees
Hackberry N. 46. E. 17 L.
Pawpaw S. 44 E. 20 L.
Gum S. 27 W. 90 L.
Hackberry N 5 W. 22 L.

3rd mile

23 00 Crossed a biough 25 L. wide
27 00 X a biough—50 L. wide
40 00 ¼ Section post—br. trees
Oak N. 44. E 42 L.
Hackberry S 3 W. 22 L.
52 00 X a biough—½ ch. wide
80 00 S. post br. trees
Sickamore N. 7. E. 42 L.
Haw S. 75 E. 18 L.
Gum S 26 W 19 L
Ditto N. 59 W 12 L.
X

4th mile

20 00 X a biough—25 L. wide
40 00 ¼ Section post—br. trees
Box Elder S. 32. E. 23 L.
Oak S 80 W. 8 L.

349

Course.	Distance. Ch.	Lk.	
	80	00	S. post. br. trees
			Oak N. 45 E. 31 L.
			Gum S 84 E 25 L.
Quit			Hackberry S. 22 W. 23 L.
			Ditto N 69 W 16. L.

5th mile

40 00 ¼ S. post br. trees
Hackberry S. 51 W. 71 L.
Ash N 50 E 56 L.
79 00 X the Sunflower—biough 1 ch. wide
80 00 S. post br. trees
Hackberry N. 62 E. 63 L.
Ash S 83 E. 66 L.
Hackberry S 14 W. 95 L
Percon N 37 W 59 L

6th mile

40 00 ¼ S. post—br. trees.
Cypress S 32 E. 20 L.
Persimon N. 62 W 22 L.
41 00 X a biough 1 ch. wide
49 00 X a biough—1 ch. wide
80 00 T—corner b. trees
Oak N 55 E 26 L.
Hackberry S. 22. E 40 L.
Ellum S 63 W 50 L
X Hackberry N 16 W 21 L.

Running W.

1st mile — North Boundary of T. 21 R 8 W.

1 00 Came to an open slew
10 00 left the same
40 00 ¼ S. post br. trees
Persimon S 87 E 10 L
Hackberry N 9 E 15 L.
78 25 X a line
80 00 S. post br. trees
Ash N. 29 E 51 L
Hackberry S. 63 E 48 L
Ditto S 61 W 51 L
Ditto N 78 W 58 L

350

Course.	Distance. Ch.	Lk.	
2nd mile			
	40	00	¼ S. post—br. trees
			Hackberry N 17 E 13 L.
			Ditto S 62 W 5 L
	67	00	X the Sunflower biough 1 ch. wide
	80	00	S. post br. trees
			Gum N 40 E 35 L
			Ditto S 67 E. 36 L.
			Ditto S 47 W. 46 L.
			Ellum N 62 W 100 L.
			X
3rd mile			
	40	00	¼ S. post br trees.
			Oak N 44 E 13 L
			Percon S 77 W 65 L
	80	00	S. post br trees
			Hackberry N 31 E.
			Ditto S 35 E.
			Cypress S 61 W.
			Hackberry N 34 W.
4th mile			
	40	09	¼ S. post br. trees
			Sickmore S. 50 W. 4 L.
			Ditto N. 80 W 28 L.
	65	96	Cume to the west Boundary 52 L. S. E from the corner in which place set up a post br. trees.
			Hackberry S. 38 E. 27 L.
			Ditto N 83 E. 21 L.
			X
			W. Boundary of Section 1.
S. 31½ E	6	32	Lot post br trees—Box Elder N. 93 E. 16 L
			Persimon S 25 W. 21 L
	12	64	Lot post br. trees Hackberry N 29 E. 5 L
			Gum S. 30 E. 11 L.

18 96 Lot post br trees Box Elder S 88 W 21 L
Ditto S 30 E. 39 L
25 28 Lot post—br. trees Hackberry N 4 E 62 L
Ditto S 33 E. 54 L.
28 40 changed the course
S 16¼ E 3 20 Lot post—br trees Cypress N 40 E 4 L
Ditto S 60 W 37 L
9 52 Lot post br. trees Hackberry N. 21 W 41 L
Ellum S 26 E 91 L.

351

Course.	Distance. Ch. Lk.	
	11 00	Change the course
S.	4 84	Lot post br trees Box Elder N 28 E 19 L.
		Ellum S 8 W. 12 L.
	11 16	Section post br trees Gum N 28 E 19 L
		Ellum S 8 W. 12 L.
		South Boundary of Section 1.
S. 74 E	40 00	Came to an open slew.
	49 00	left the same
	60 00	Came to an open slew
	64 00	left the same
	95 00	Came to an open slew.
	102 00	left the same
	126 40	S. post—bear—trees Persimon N 28 W 50 L.
		Hackberry S 20 W. 28 L
		X East Boundary of Section 1.
N 9 W	10 22	Lot post—br trees Oak N 76 W. 100 L.
		Ash S. 21 W. 17 L
	20 44	Lot post br trees Maple S 45 W. 24 L.
		Persimon N 12 W. 113 L
	30 66	Lot post br trees Percon N 45 W. 35 L
		Oak S. 44 W 74 L.
	40 88	Lot post br. trees Box Elder N 12 W 13 L
		Hackberry S 61 W 2 L
	51 10	Lot post—br trees Gum N 55 W 87 L.
		Oak S. 16 W 72 L.
	61 32	Lot post br trees Gum N. 10. W. 82 L.
		Hackbry S 74 W. 13 L.
	71 54	Lot post br trees Hackberry N. 17 W. 40 L.
		Oak S. 25. W. 25 L.
	82 20	Came to the North Boundary.
X		West Boundary of Section 2.
South	6 32	Lot post br. Tree Gum. N. 80. E. 17 L.
		Ditto S. 18. W. 24 L.
	12 64	Lot post br. Tree Sickamore S. 50 E 30 L.
		Ditto N. 70 E. 12 L.
	18 96	Lot post br. tree Ash N. 47 E 5 L.
		Mulberry N. 20. W. 23 L.
	25 28	Lot post Hackberry N. 18. E 17. L.
		Ditto S 11 W 50. L.

352

Course.	Distance. Ch.	Lk.	
	31	60	Lot post br. trees Gum. N. 12. W. 11 L. Ditto S. 13. W. 50 L.
	37	92	Lot post br trees Cottonwood N. 78. E. 11. L. Ditto S 42 E 10. L.
	44	24	Lot post br. trees Sickamore S. 75 E. 10 L. Hackberry N. 85 E 77. L
	49	84	Changed the course.
S 28½ W.	1	72	Section post Sickamore N. 2 W. 100 L. Gum. S. 40 W. 25 L. South Boundary of S. 2.
S. 59 E.	65	00	X a dry biough.
	126	40	S. post—br. trees Ash. N. 12. W. 6. L. Ditto S 59. W. 5 L. East Boundary of S. 2.
S. 10 W	10	22	Lot post br. trees Ash. N. 81. E. 26 L. Ditto N. 88 W. 40 L.
	20	44	Lot post br. trees Ash N. 11 W. 12 L. Ellum S 64 W. 6 L.
	30	66	Lot post br trees Ash N. 21 E 25 L. Hackberry S. 12 W. 37 L.
	36	66	X a biough
	40	88	Lot post—br. trees Oak N. 42 W. 6 L. Ditto S. 53 W. 14 L.
	51	10	L. post—br trees Persimon N. 64 E. 8 L. Boxelder. S. 63 W. 20 L.
	61	32	Lot post br trees Mulberry N. 13 W. 11 L. Ditto S 13 W. 13 L.
	67	32	X a biough
X	71	54	Lot post—br trees Oak N. 33 W. 22 L. Hackberry S 46 W. 25 L.
	81	84	Closed the section
S 28½ W.			West Boundary of S. 3.
	6	32	Lot post br trees Ellum N. 15. E 40 L. Gum S. 39 W. 25 L.
	12	64	Boxelder N. 21 E 26 L. Persimon S 36 W. 14 L
	18	28	Changed the course
S 38½ W.		68	Lot post br trees Percon N. 21 E 12 L. Persimon S 36 W. 14 L.
	7	00	Lot post br trees Mulberry N. 15 E. 24 L. Hackberry S 40 E 12 L.

353

Course.	Distance. Ch.	Lk.	
	13	32	Lot post br trees Box elder. N. 88 E 55. L. Hackberry S. 35 E 14 L.
	15	00	Changed the course.

S. 58½ W 4 64 Lot post—br. trees Mulberry N. 38. E 39 L.
Hackberry S 80 W 91 L.
10 96 Lot post br trees Ash S 88 E 68 L.
Ellum S 80 W 70 L.
16 87 S post br trees Hackberry N. 55 E 19 L.
Ellum S 68 W 45 L
S 40 W East boundary of S. E.
10 22 Lot post br trees Ellum N. 20. E. 22 L
Ash N 53 W. 15 L.
20 44 Lot post br trees Ellum N. 13 W. 28 L.
Hackberry N. 73 W. 28 L.
30 63 Lot post br trees Gum N. 12 W. 4 L.
Ditto S 50 W 56 L.
40 88 Lot post br trees Sickamore N. 30 E 23 L.
X
Gum S 53 W 11 L.
51 10 Lot post br trees Cottonwood N 17 E 22 L.
Hackberry S 80 W. 20 L.
61 32 Lot post br. trees Mulberry N 13 E 8 L.
Gum S 74 W 9 L.
64 32 X a dry biough.
71 54 Lot post br trees. Boxelder N. 17 W. 8
Gum N. 74 W 12
81 76 S. post—br trees Mulberry N. 2 E 36 L.
Hackberry S 60 W 31 L.
South boundary of S. 3.
N. 44 W 5 00 came to an open slough.
17 00 left the same.
33 00 came to an open slew.
41 00 left the same
62 00 came to an open slew.
65 00 left the same:
X
127 16 Closed the section
North Boundary of Section 4.
S 58½ W 6 73 Lot post—br trees Cypress N. 88. E. 6 L.
Ditto S 33 W 62 L.
13 05 Lot post br trees Persimon N 73 E 12 L.
Boxelder S 40 W 85 L.
18 13 changed the course
S 43½ W 1 24 Lot post br trees Hackberry N. 2 E 30. L.
Gum S 44 W 50 L.
7 56 Lot post br trees Hackberry N 4 E 12 L.
Ditto S 56 W 32 L.

354

Course.	Distance. Ch. Lk.	
	13 88	Lot post—br trees Hackberry N 81. E 12. L. Redbud S 56 W 32 L.
	15 12	Changed the course.

S 63½ W.	5 20	Lot post br trees Hackberry N. 10 E 22 L. Ellum S 28 W 41 L.
	11 52	Lot post br trees Gum N. 82 E 75 L. Hackberry S. 3 E 15 L.
	17 84	S post br trees Sickamore N 13 E 6 L. Ditto S 36 W 22 L.
		West boundary of S. 4.
S 29 E	61 00	X a dry biough 1 ch. wide.
	126 40	S post—br trees Locus N. 77. E. 65 L. Ash S 74 W. 78 L.
		South boundary of S. 4.
S 55 W	10 22	Lot post br trees Gum N. 8. W. 17 L. Hackberry N. 65 W 30 L.
	20 44	Lot post br trees Hackberry N. 43 E. 37 L. Ash S. 77 W. 28 L.
	30 66	Lot post br trees Persimon N. 35 W. 28 L. Gum N. 68 W. 73 L.
	40 88	Lot post br trees Gum N. 54. E 27 L. Hackberry N. 52 W 5 L.
	51 10	Lot post br trees Hackberry N 4 E 11 L. Ditto N 54 W 23 L.
	61 32	Lot post br trees Gum N 28 E 10 L. Percon S 53 W 84 L.
	71 54	Lot post br trees Redbud N 29 W 22 L. Sasafras S 82 W 5 L.
	82 57	Closed the Section. North Boundary of S. 5.
S 63½ W	6 32	Lot post br. trees Cottonwood N. 63 E. 46 L. Ditto S 30. W 41 L.
	12 64	Lot post br. trees Gum N 40 E 28 L. Redbud S 75 W 6 L.
	18 96	Lot post br. trees Persimon S 80 E 24 L. Hackberry S 63 W 8 L
	25 28	Lot post br trees Cottonwood N. 24 E 19 L. Boxelder S 80 W 24 L.
	27 16	Changed the course.
S 48½ W	4 44	Lot post—br trees Boxelder N 64 E 25 L.
	10 00	Changed the course Redbud S 13 E 11 L.
	00 76	Lot post br. trees Sickamore N 84 E 25 L. Hackberry S 57 W 4 L.
	7 76	Lot post br trees Dogwood N 8 E 65 L. Boxelder N 66 W 39 L.
	15 00	Changed the course.

355

Course.	Distance. Ch. Lk.	
N 84½ W	11 76	S. post br trees Hackberry N 41 E 13 L. Gum S 73 W 3 L.
		West boundary of S. 5.
S 6 E	24 40	Came to lake Bolivar and set section post br trees Pecan S 29 E 12 L. Boxelder S 28 W 31 L.
		South boundary of section 5.

S 66 W	2	00	X an open slew 2 ch. wide X
	10	22	Lot post br trees Gum N. 10 W. 2 L. Oak S 30 W 16 L.
	15	00	X an open slew 2 ch. wide
	20	44	Lot post br trees Redbud N 68 E 13 L. Gum S 80 W 8 L.
	30	66	Lot post br trees Locus N 40 E— Gum N 88 W—
	40	88	Lot post br trees Redbud N 48 E 5 L. ditto N 81 W 20 L.
X	51	10	Lot post br trees Locus N 48 E 95 L. ditto S 28 W 25 L.
	61	32	Lot post br trees Box elder N. 48. E. 52 L. Pawpaw N 88 W 59 L.
	62	92	Changed the course
N 7½ W	3	90	Changed the course
N 26½ W	15	00	Changed the course
N 17½ W	30	00	Changed the course
N 35½ W	17	50	Lot post—br trees Box elder N 88 E 18 L. Ditto N 38 W 41 L.
	35	00	Changed the course.
N 52½ W	28	30	Closed the section
N 84½ W			North boundary of S. 8.
	23	24	Changed the course.
W " "	35	00	Came to the West boundary of the T. at the point where it came to the Miss. River. South boundary of S. 6.
N 52½ W	7	00	Changed the course
N 62½ W	19	00	Changed the course
N 77½ W	25	00	Changed the course
W " "	13	76	Came to the West Boundary 8 ch south of the N. W. Corner.
			Section Lines.
			First grade line.
			Beginning at the South boundary and running north between S• 10 and 11

356

Course.	Distance. Ch.	Lk.	
	11	20	Came to lake Bolivar and set post. br trees Sickamore S 26 E 13 L. Gum N 37 W 34 L.
	56	00	Set a post and left the lake br trees Ash N. 22 E. 11 L. Locus S 18 W 6 L.
	76	00	Enter cain.
	80	00	S post br trees Box elder N. 13 E 32 L. Ditto S 47 E 4 L. Sasafras S 27 W 8 L. Gum N 28 W 58 L.
			2nd mile 9 & 12.

7 00 Enter open woods.
40 00 ¼ S. post br trees Locus S 58 E 19 L.
Hackberry N 47 W 14 L.
80 00 S post br trees Hackberry N 15 W 8 L.
Ditto S 7 E 16 L.
Ellum S 53 W 11 L.
Hackberry N 88 W 24 L.
3rd mile between S 8 & 13.
3 00 Left open woods.
25 00 Enter open woods.
40 00 ¼ S. post br trees Hackberry N 66 W 13 L.
Oak S 24 E 38 L.
61 32 Came to lake Bolivar and set a post. br trees
Persimon N. 63 W 23 L.
Ellum S 6 E 41 L.
Second guide line beginning on the south Boundary and running north.
1st mile between S° 11 & 17
11 00 Enter open woods.
39 00 Enter cain.
40 00 ¼ S. post br trees Hackberry N. 84 E. 12 L.
Ash S 28 W 5 L.
60 00 Enter open woods.
80 00 S post br trees Cypress N 4 E 4.50 L.
Ellum S 5 E 4.50 L.
Locus S 8 W 5.00 L.
Persimon N 6 W 5.00 L.
2nd mile between S° 16 & 12
21 00 Enter cain.
40 00 ¼ section post br trees Ellum N. 12 39 L.
Pawpaw S 88 W 30 L.

357

Course.	Distance. Ch. Lk.	
	80 00	S post—br trees Redbud N. 75 E 62. L.
		Gum X S 18 E 22 L.
		Ditto S 66 W 69 L.
		Mulberry N 2 W 78 L.
		3rd mile between S° 13 & 15.
	39 89	came to the back line of S. 5, 2 ch & 25 L.
		N. E. from Lot post No. 2.
		Third guide line beginning on the South Boundary and running north.
		1st mile between S° 17 & 18.
	1 00	enter a lake.
	9 00	Left the same and enter cain.
X		
	40 00	¼ S. post br. trees Oak. S 39 E 8 L.
		Ditto S 88 W 22 L.

(Duplicate)

55 00 X a biough—1 ch wide.
80 00 S. post—br trees Oak. N 70 E 40 L.
Ellum S. 24 E 25 L.
Gum S. 30 W. 44 L.
Boxelder N 28 W 68 L.
Second mile between S^{s} 16 & 19.
23 00 enter open slew.
40 00 ¼ S. post br trees Hackberry N. 34 W 34 L.
Mulberry S 19 W 15 L.
41 00 enter cain.
80 00 S post br. trees Oak N. 69 E 70 L.
Hackberry S 61 E 53 L.
Oak S 72 W 27 L.
Ditto N 64 W 24 L.
3rd mile between S^{s} 15 & 20.
16 00 X a biough 1 ch wide.
40 00 ¼ S. post br. trees Ellum S 82 E 22 L.
Boxelder S 19 W 70 L.
65 00 Enter an open slew.
75 00 Left the same and enter cain.
80 00 S post br trees Hackberry N 53 E 31 L.
Ellum S 80 E 23 L.
Ditto S 19 W 10 L.
Ditto N 28 W 24 L.
4th mile between S^{s} 14 & 21. &
11 05 Came to the back line of S 4 4 ch & 14 L.
N. E. from Lot post No. 1.
4th guide line beginning on the South Boundary and running north

Course.	Distance. Ch.	Lk.	
358			1st mile between S^{s} 18 & 29.
	28	00	X a biough25 L wide
	40	00	¼ S. post br trees Dogwood N. 13. E. 7 L.
			Ditto N 72 W 6 L.
	61	00	X a biough 2 ch wide.
	80	00	S post br trees Redbud N. 65 E 41 L.
			Gum S 49 E 60 L.
			Ditto S 16 W 25 L.
			Ditto N 24 W 34 L.
			2nd mile between S^{s} 19 & 28.
	40	00	¼ S. post br trees Dogwood N. 42 E 26 L.
			Ditto S 43 W 16 L.
	72	00	X a biough 25 L. wide.
	80	00	S. post—br. trees Oak N. 3 E 9. L.
			Ditto S 73 E 17 L.
			Boxelder S 50 W 13 L.
			Hackberry N 45 W 19 L.
			3rd mile between S^{s}: 20 & 27.
	13	50	X a biough 25 Ls. wide.

35 00 enter an open slew.
40 00 ¼ S. post br trees Oak S 33 E 7 L.
Locus N 87 W 3 L.
46 00 enter cain.
80 00 S post br trees Gum. N. 16. E 23 L.
Ditto S 27 E 22 L.
Ditto S. 76 W 13 L.
Ditto N. 13 W 49 L.
4th mile between S^{s} 21 & 26.
40 00 ¼ S post br trees Cottonwood S 39 E 21 L.
Sickamore S 80 W 31 L.
80 00 S post br trees Oak N. 88 E 32 L.
Ditto S 48 E 40 L.
Ellum S 79 W 20 L.
Maple N 69 W 38 L.
5th mile between S^{s} 22 & 25.
18 00 X an open slew 2 chs wide.
39 00 enter an open slew.
40 00 ¼ S post—br. trees Hackberry S. 73 E 22 L.
Ditto S 27 W 17 L.
46 00 Enter cain
75 00 Enter an open slew.
80 00 S post—br trees Hackberry N. 8 E 31 L.
Ditto S 64 E 3 L.
Ditto S 27 W 6 L.
Ditto N 56 W 14 L.

359

Course.	Distance. Ch. Lk.	
		6th mile between S^{s}. 23 & 24.
	20 00	enter open slew.
	23 00	enter cain
	40 00	¼ S post br. trees Redbud N. 17 E. 11 L. Sasafras N. 3 W 31 L.
	80 00	came to the North boundary of 10 L. E. of the 2nd mile post from the N. E corner. 5th Guide Line beginning on the South Boundary and running north. 1st mile between S^{s} 29 & 30.
	40 00	¼ S. post br trees Pawpaw N. 80 E 3 L. Ditto S 8 W 16 L.
	80 00	S. post br trees Boxelder N. 69 E 27 L. Ditto S 54 E 8 L. Hackberry S 66 W 24 L. Boxelder N 22 W 31 L. 2nd mile between S^{s} 28 & 31.
	9 00	X a biough 50 L. wide.
	26 00	X a biough 2 ch wide.
	40 00	¼ S post br trees Ash N. 7 E. 78 L. Boxelder S 60 W. 46 L.
	76 00	X biough—50 L wide

80 00 S post—br trees Oak N. 63 E 4 L.
Ditto S 74 E. 53 L.
Hackberry S 24 W 39 L.
Ash N 10 W 28 L.
3rd mile between S^{s} 27 & 32.
39 43 ¼ section post br trees Redbud N. 17 W 16 L.
Hackberry N 43 E 9 L.
79 43 S post br trees cottonwood N. 5 E 105 L.
Gum S 25 E 27 L.
Ditto N 85 W 37 L.
Ditto N 75 W 76 L.
4th mile between S^{s} 26 & 33.
40 36 ¼ S post br trees Ellum S. 76 E 8 L.
Gum S 80 W 32 L.
52 00 enter open slew.
62 00 left the same and enter cain.

360

Course. Distance. Ch. Lk.

80 36 S post br trees X Hackberry N 7 E 32 L.
Ellum S 38 E 52 L.
Gum S 51 W 65 L.
Mulberry S 66 W 42 L.
5th mile between S^{s} 25 & 34
18 00 X an open slew 2 ch wide
40 00 ¼ S post br trees Ellum N. 17 E 65
Redbud S 28 W 46
60 00 enter open slew.
64 00 left the same.
67 00 X a biough 50 L. wide
80 00 S post br trees Hackberry N. 8 E 31 L.
Ellum S 64 E 3 L.
Persimon S 27 W 3 L.
Oak N 56 W 14 L.
6th mile between S^{s} 24 & 35.
4 00 enter an open slew.
13 00 Left the same
40 00 ¼ S. post br trees Ellum S 33 E 15 L.
Oak S 16 W 21 L.
63 00 X the Sunflower biough
80 00 Came to the north boundary of the T at the 1st mile post from the N. E. Corner.
First parallel line beginning on the East boundary and running west.
1st mile between S. 30 & 31.
40 00 ¼ S post br trees Persimon N. 88 E 33 L.
Ash S 12 W 17 L.
58 00 X a biough 25 L wide
80 17 came to the first guide line 57 L south of the post
17 00 cross a biough 25 L. wide

20 00 X a open slew 2 ch. wide
40 00 ¼ Section post br trees Ash N. 78 E 50 L
Gum S 50 W 31 L.
62 00 cross an open slew 2 ch wide
80 00 came to the 2nd guide line 6 L. North of the post.

361

Course.	Distance. Ch.	Lk.	
			3rd mile between Ss 18 & 19.
	8	00	X cross an open slew 2 chs wide
	28	00	X the Strait biough 1 ch wide.
	40	00	¼ S post br trees Hackberry N. 52 W. 8 L. Ellum S 7 W 6 L.
	68	00	X an open slew 2 ch wide
	79	95	came to the 3 guide line 15 L. north of the post.
			4th mile between S°. 16 & 17.
	40	00	¼ section post br trees Hackberry N 36 W 9 L Ditto S 22 W 32 L.
	42	00	enter open woods
	80	50	came to the 4th guide line 17 L north of the post
			5th mile between S° 11 & 12.
	20	00	enter cain.
	40	00	¼ S post br trees Sickamore N 73 E 100 L. Gum S 69 W 73 L.
	45	00	Came to lake Bolivar and sit a post..
			br trees Oak S 8 E 61 L.
			Ditto N 43 W 20 L.
	69	00	set a post and left the lake.
			Br. trees Locus N 62 E 4 L.
			Persimon S 19 W. 5 L.
	80	00	came to the 5th guide line at the post
			6th mile between S° 9 & 10.
	40	00	¼ S post br trees Hackberry N. 25 E 6 L. Ditto S 45 W 9 L.
	42	00	enter cain.
	79	60	came to the west boundary 9 L. South of the post.
			Second parallel beginning on the east boundary and running west
			1st mile between S 31 & 32
	40	00	¼ S post br trees Box elder N 44 E 11 L. Hackberry S 89 W 53 L.
	61	00	X a biough 25 L. wide
	80	00	came to the first guide line at the post.

362

Course.	Distance. Ch.	Lk.	
			2nd mile between S° 27 & 28
	28	00	X a biough—50 L. wide

40 00 ¼ S post br trees Hackberry N 40 E 7 L.
Oak N 8 W 6 L.
63 00 X a biough 22 L. wide.
80 00 came to the 2nd guide line at the post 3rd mile between S° 19 & 20.
25 00 X a biough 25 L. wide.
40 00 ¼ section post br trees Boxelder S 35 E 3 L.
gum N 12 E 39 L
47 00 X a biough 50 L wide
71 00 X the strait biough 1 ch. wide.
80 00 came to the 3rd guide line at the post 4th mile between S° 15 & 16.
30 00 enter open woods
40 00 ¼ S post—br trees Ash N 61 E 54 L.
Locus S 58 W 36 L.
44 00 left open woods & enter cain.
55 00 left the same.
80 00 came to the 4th guide line at the post, 5th mile between S° 12 & 13.
38 00 came to Lake Bolivar and set up a post—br. trees Sickamore N 32 E 27 L.
Ditto S 58 W 37 L.
58 00 Set up a post and left the lake br trees Oak N. 70 E 11 L.
Persimon S 6 W 53 L.
80 00 came to the 5th guide line at the post 6th mile between S° 8 & 9.
3 00 X a biough 1 ch wide
8 00 left open woods and enter cain.
36 00 enter open woods.
40 00 ¼ section post br trees Hackberry S 80 E 11 L
Ditto N 48 W 15 L
45 00 left open woods

363

Course.	Distance. Ch. Lk.	
	55 00	X a biough 1 ch wide
	62 00	enter open woods.
	79 88	Came to the West boundary 98 L. South of the post.
		Third parallel beginning on the East boundary and running West.
		1st mile between S° 32 & 33.
	32 00	enter an open slew.
	39 00	left the same.
	40 08	¼ S post br trees
		Gum N. 32 E 5 L.
		Ditto S 21 W 8 L.
	80 06	Came to the 1st guide line at the post.
		2nd mile between S° 26 & 27.
	32 00	enter an open slew.

38 08 left the same.
40 00 ¼ S post br trees
Ash N 8 E 24 L.
Ditto S 66 E 17 L.
80 00 Came to the 2nd guide line at the post
3rd mile between S^{s} 20 & 21.
40 00 ¼ S post br trees
Sasafras N. 23 E 20 L.
Ditto S 40 W 61 L.
62 50 Cross a dry biough.
71 00 X a open slew.
80 00 Came to the 3rd guide line 20 L South of the post.
4th mile between S^{s} 14 & 15.
15 85 came to the back line of S 4, 4 ch 91 L. S. W. from Lot post No. 2.
5th mile. O.
6th mile between S^{s} 7 & 8.
15 00 Set post and left the lake. br trees
Ellum N. 16 E 4 L.
Locus S 17 W 33 L.
35 00 Left open woods
40 00 ¼ S post br trees
Ellum N 41 E 4 L.
Redbud S 50 W 4 L.

364

Course.	Distance. Ch.	Lk.	
	80	00	came to the West boundary at the post.
			4th Parallel beginning on the East boundary and running West.
			1st mile between S^{s} 33 & 34.
	40	00	¼ S. post br. trees Mulberry S 67 E 22 L
			Boxelder N 14 E 25 L.
	80	30	came to the 1st guide line 70 L. North of the post.
			2nd mile between S^{s} 25 & 26.
	13	00	Enter an open slew.
	31	00	left the same
	40	00	¼ S post br trees Hackberry S 73 E 19 L
			Gum N 56 W 43 L.
	80	00	came to the 2nd guide line at the post
			3rd mile between S^{s} 21 & 22.
	21	48	came to the back line of S 2 1 ch
			48 L. N. E. from the corner.
			5th parallel beginning on the East Boundary and running West.
			1st mile between S^{s} 34 & 35.
		00	X the Sunflower biough 1 ch wide
	24	00	X the same
3	35	00	X it again.

40 10 ¼ S post br trees Oak N 38 E 31 L.
Hackberry S 28 E 25 L.
80 00 Came to the 1st guide line at the post.
2nd mile between S^{n} 24 & 25.
40 00 ¼ S post br. trees Hackberry S 9 E 13 L
Persimon N 23 21 L
76 00 enter an open slew.
80 10 came to the 2nd guide line at the post.
3rd mile between S^{n} 22 & 23.
2 00 left open slew & enter cain.
7 36 came to the back line of S 1.
1 ch .08 L N. W. from the corner.

365

St.	Course.	Distance. Ch.	Lk.
		Traverse of Lake Bolivar East side—Section 13.	
1	S 7½ E	21	70
		Section 12.	
1	S 7½ E	13	00
2	S 3½ W	32	00
3	S 13½ W	36	17
		Section 11.	
1	S 13½ W	17	00
2	S 23½ W	14	00
3	S 33½ W	29	00
4	S 28½ W	17	37
		Section 10.	
1	S 28½ W	12	74
		West side of the Lake—Section 10.	
1	N 25½ E	25	70
2	N. 48½ E	20	00
3	N 35½ E	24	00
		Section 11.	
1	N. 24½ E	26	38
		Section 12.	
1	N 15½ E	28	00
2	N 7½ E	27	00
3	N " "	26	25
		Section 10.	
1	N 17½ W	28	00
2	N 21½ W	37	00
		Section 8.	
1	N 52½ W	11	59
2	N 26½ W	13	00
		Section 7.	
1	N 36½ W	18	00
2	N 61½ W	28	00
3	N. 83½ W	30	00

Recorded April 9th 1830.
T 21. R. 8 W. Choctaw District
Surveyed by Benj Griffin D. S. in January & February 1830.

366 I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the "Surveyor General's Office" do hereby certify that the foregoing pages are a true and faithful copy and transcript of and from the said record in so far as it is shown in Field Note Book $\left[\frac{17}{F}\right]$ of the original survey now on file and in my official keeping as a part of the Record of the State Land Office. The same is a true and correct copy in every line and figure and in strict conformity with the original.

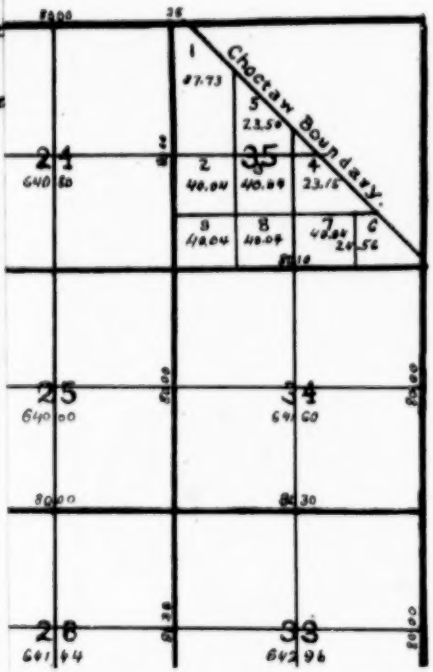
Given under my hand and official seal at Jackson, Mississippi this 13th day of May, A. D. 1902.

[SEAL.] (Signed) E. N. NALL,
Land Commissioner.

(Here follows map marked page 367.)

FOLD OUT IS TOO LARGE TO BE FILMED

No. 2
Moo
v.
McQu



368 NOTE.—T. 22 R. 8 W. is recorded in Book containing maps of the Choctaw Cession of 1830.

The whole of this Township was surveyed by Benjamine Griffin, Deputy Surveyor in January and February, 1830.

Surveyors' Office, Washington, Miss. May 31st, 1830.

Examined and approved.

(Signed) JOE DUNBAR,
Surveyor South of Tennessee.

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the surveyor Generals Office do hereby certify that the above and foregoing map is a true and faithful tracing and copy of and from the original now on file and in my official keeping as a part of the said record, the same is a true and correct copy of every line and figure and in strict conformity with the original.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May, A. D. 1902.

[SEAL] (Signed) E. H. NALL,
Land Commissioner.

EXHIBIT "D."

Record of State Lands, Bolivar County, Mississippi.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Geo. P. Melcher, sheriff and tax collector in and for said County do hereby certify that the following is a correct list of lands sold to the State of Mississippi on the 1st Monday—the 6th day of March, 1882, for delinquent taxes due thereon for the fiscal year 1881 pursuant to the requirements of law.

To whom assessed.	When sold to State.			Description of land.	Sec.	Tp.	Range.	E. or W.	No. of acres.	Printer's fee.	State tax.	County tax.	Sheriff's fees.		
	Day.	Month.	Year.							$ Cts.	$ Cts.	$ Cts.	$ Cts.		
Unknown. ..	6	M'ch	1882	*	*	*	*	*	*	*	*	*	*		
"	"	"	"	All	36	21	8	W.	824	20	12 36	74 16	1 00	Island No. 76	28 Sept. 1891 J. T. Currie & M. G. Hall
"	"	"	"	All fract'l.	37	21	8	"	185	20	2 88	17 28	1 00	Island No. 76	26 Oct. 1891 " " " " " " "

GEO. P. MELCHER, *Sh'ff, &c.*

Recorded and handed sheriff April —, 1883.

I, E. H. Nall, Land Commissioner, and having in my official keeping as such the records of the State Land Office, do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "State Levee Lands" "Auditor's office" Desoto, "Bolivar," "Coahoma" "Issaquas" "No. 1" and on page 37 of the said book

Given under my hand and official seal at Jackson, Mississippi this the 13th day of May, 1902.

E. N. NALL, *Land Commissioner.*

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

Record of State Lands, Bolivar County, Mississippi, — 49.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Geo. P. Melcher, sheriff & tax collector in and for said County do hereby certify that the following is a correct list of lands sold to the State of Mississippi on the 1st Monday the 5th day March 1894, for delinquent taxes due thereon for the fiscal year 1893, pursuant to the requirements of law.

To whom assessed.	When sold to State.			Description of land.	Section.	Township.	Range.	E. or W.	No. of acres.	Printer's fee.	State tax.	County tax.	Sheriff's fees.	Clerk's fees.	Levee tax.	When redeemed or purchased from State.			Name of purchaser.
	Day.	Mo.	Year.													Day.	Mo.	Year.	
										$ Cts.	$ Cts.	$ Cts.	$ Cts.	$ Cts.					
	5	Mch.	1894	* *	*	*	*	W.	*	*	*	*	*	*	*	*	*	*	*
Curry & Hall.....	"	"	"	All (outside levee)...	36	21	8	"	824	20	2 06	7 00	25	10					
Curry & Hall.....	"	"	"	All (" ")...	37	21	8	"	185	20	46	1 56	25	10					
* *	*	*	*	* *	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

GEO. P. MELCHER,
Sheriff & Tax Collector, Bolivar County.

Recorded and returned to clerk May 5, 1894.
W. W. STONE, *Auditor.*

I, E. H. Nall, Land Commissioner and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody styled and labeled "State & Levee Lands" "Auditor's office" "De Soto," "Bolivar" "Coahoma" "Issaquena" "No. 1" and on page 49 of the said book.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May A. D. 1902.
[L. S.]

E. H. NALL, *Land Commissioner.*

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

Bolivar.

Forfeited Lands Remaining in the Auditor's Office Passed the Date of Redemption and Transferred to the State Land Office.

To whom assessed.	When sold to State.			Description of land.	Sec.	Township.	Range.	E. or W.	No. of acres.	Assessed value.	State tax.	County tax.	Yazoo, Miss., valley tax.	Miss. levee tax.
	Day.	Mo.	Year.							$ Cts.	$ Cts.	$ Cts.	$ Cts.	$ Cts.
	5	M'ch	1894	* * * *	*	*	*	W	*	*	*	*	*	*
				All (outside levee)	36	21	8	"	824	.....	6 18	21 00		
				All (" ")	37	21	8	"	185	.....	1 38	4 68		
				* * * *	*	*	*	*	*	*	*	*	*	*

AUDITOR'S OFFICE, STATE OF MISSISSIPPI.

To the State Land Commission:

I, W. D. Holder, Auditor of Public Accounts, do hereby certify that the above and foregoing is a true and correct list of lands in — county, on which the time allowed for redemption has expired.

Given under my hand and seal of office, at Jackson, Miss., this 15th day of April, A. D. 1896.

[L. S.]

W. D. HOLDER, *Auditor.*

Rec'd Apr. 15/96.
JNO. M. SIMONTON, *L. C.*

I, E. H. Nall, Land Commissioner, do hereby certify that this sheet is a true copy of and from the original certified list filed in the State Land office, and now in my custody in so far as the same relates to the tracts or parcels of land therein described.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May 1902.

[L. S.]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

EXHIBIT G.

Bolivar County, Township —, Range —.

Patentee and Date of Sale —.

Description of tract.				Contents.		Rate per acre.	Amount.	Date of sale.	No. of patent.	To whom patented.	Date of patent.	Remarks.
Part of section.	S.	T.	R.	Acres.	100ths.							
All (outside of levee) from page 32	36	21	8 W.	824								
Lot 4 & N ½ Lot 5	36	21	8 W.	129	75	25	32 44	Aug. 10, 1899	6950	Elizabeth S. Woods.	Aug. 10, 1899	
Lot 6 & S ½ Lot 5	36	21	8 W.	127	05	25	31 76	Aug. 10, 1899	6951	Malvina May Scott.	Aug. 10, 1899	
Lot 7 & N ½ Lot 8	36	21	8 W.	124	25	25	31 06	Aug. 10, 1899	6953	E. M. Scott	Aug. 10, 1899	
Lot 1 & N ½ Lot 2	36	21	8 W.	130	25	25	32 56	Aug. 10, 1899	6955	W. A. Yerger.	Aug. 10, 1899	
S ½ Lot 2 & all Lot 3	36	21	8 W.	125	25	25	31 31	Aug. 10, 1899	6956	E. H. Woods	Aug. 10, 1899	
All (outside levee) from page 32	37	21	8 W.	185	00							
S ½ Lot 8 Sec 36 and Lot 2	37	21	8 W.	148	55	25	37 14	Aug. 10, 1899	6952	W. H. Fitzgerald	Aug. 10, 1899	
Lots 1 & 3	37	21	8 W.	125	58	25	31 39	Aug. 10, 1899	6954	M. Y. Scott	Aug. 10, 1899	

I, E. H. Nall, Land Commissioner, and having in my official keeping as such the records of the State Land Office do hereby certify that the above and foregoing writing and drawing is a true and correct copy of and from the record book in my custody, styled and labeled "Forfeited tax lands 1892, Vol. 1, State Land Office Mississippi" and on page 27 of the said book.

Given under my hand and official seal at Jackson, Mississippi this 13th day of May A. D. 1902.

[SEAL]

E. H. NALL,
Land Commissioner.

Endorsed: Filed Nov. 24, 1905. W. P. Feild, clerk.

373 C. L. JONES, JR., a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination:

Int. 1. Please state your name, age, residence and occupation.

A. C. L. Jones, Jr.; 26 years old; live at Rosedale, Mississippi; at present I am employed by the assessor of Bolivar County to make the assessment of taxes, as deputy assessor.

Int. 2. Where did you reside in the early part of 1899, Mr. Jones?

A. Well, sir, a few days after August 8th, 1899, I was on Island 76.

Int. 3. What was your residence just prior to August 8th?

A. Rosedale, Mississippi.

Int. 4. State whether or not you ever resided on Island 76 in the Mississippi River, and how you came to reside thereon.

A. Yes, I was on Island 76 in August, September and part of November, 1899. I was employed by Mr. Charles Scott, an attorney for R. J. McGuire, to go down and take possession of Island 76, and when I got to the island I found no one there except the lighthouse keeper and his father, a young man by the name of Mr. Orton, who was living with them. I made my business known to them; took possession of the island; and I had some notices, I don't remember just exactly how they read, but it was against trespassers. I went out and posted them the afternoon I got there, or part of them.

Int. 5. What was the date on which you arrived at Island 76?

A. Sometime between August 8th and August the 15th.

Int. 6. State whether or not you went to Island 76 for the purpose of taking and holding possession of said island for Mrs. M. Y. Scott and others employed to do so by Mr. Charles Scott, an attorney at law.

(Objected to by counsel for complainants as a leading
374 question.)

A. Mr. Charlie Scott, and gave me a list of the owners' names, which I have.

Int. 8. State what Mr. Charles Scott employed you to do in regard to Island 76.

A. To go and take and hold possession of the island.

Int. 9. For whom?

A. M. Y. Scott, M. M. Scott, W. A. Yerger, E. H. Woods, and there was one or two others, that I don't remember the names of the owners.

Int. 10. After you arrived on Island 76, as above, state whether you took quiet and peaceable possession of said island.

(Complainants' counsel objected to foregoing question as a leading question.)

Int. 11. Who, if anyone, did you find on Island 76 when you arrived there, and give the name of each party?

A. I found the lighthouse keeper, Mr. Palmer Wilson, his father; I never did know what the old man's name was; we always called him "Dad" Wilson, and a young man by the name of C. W. Orton.

When I made my business known to them they yielded possession, and asked me if I wanted them to leave, and I told them that I did not. Orton asked me later on, when he came in, if I wanted him to leave; I told him I did not.

Int. 12. After having arrived on the island state exactly what you did, in your own way, in following out the instructions given you by Mr. Scott, as you have testified to above.

A. Well, sir, I first made my business known and posted my notices, as I mentioned, part of them on the day I got there and the other part the next morning. Mr. Orton went all over the island with me the evening I posted them, and also the next morning.

Int. 13. State whether or not any of the above mentioned gentlemen, or anyone else, objected to your taking possession of said island, as you have testified to above.

A. No sir, there was none on the island that objected until later on Mr. Saunders came.

375 Int. 14. State what the above mentioned parties, if anything, said to you relative to being on said island.

A. Why, they all three, Mr. Palmer Wilson, Dad Wilson and Mr. Orton, agreed to leave the island if I said so.

Int. 15. State whether or not at that time anything was said to you by any of the above mentioned parties, or anyone else, relative to their holding possession of said island for Moore & McFerrin, or anyone else.

A. No sir, there was not; none of them.

Int. 16. Mr. Jones, subsequent to your taking possession of the island, as above testified to by you, state whether or not any one attempted to take possession of said island from you, and state what measures you took, if any, to prevent same, and who, if any one, assisted you therein, going fully into details.

A. Yes sir; the Kate Adams landed one night with a logging outfit and some men; myself and the crowd that was there—Orton, Dad Wilson, Palmer Wilson, and a little negro that I had with me, went down to the boat armed. Going down there the crowd told me that they were with me and if I did not want them to get off why we would keep them back. They each took their stand; old man Wilson, Palmer Wilson, Orton and the negro boy took their stand up in the edge of the thickets with their guns; and told me to stop the first man and they would get the balance; and to start the ball rolling and they would see that nobody else came off, and in that way I kept them from unloading their plunder and their wagons.

Int. 17. Who was with you on the occasion testified to above?

A. I don't know the old man's name, but he was commonly known on the island as "Dad" Wilson, Palmer Wilson, C. W. Orton and the little negro and myself.

Int. 18. State whether or not the logging outfit landed on that occasion.

A. No sir, they did not.

Int. 19. I believe you stated that, when you first went to the island, you posted the notices warning against trespassers. State whether or not you were assisted in doing that by anyone, and give

376 the name of the party assisting you.

A. Yes sir, I was assisted by C. W. Orton.

Int. 20. State whether or not there were any other attempts made by anyone to come on the island, and whether or not they succeeded.

A. Yes sir; some few days after the boat trip, a boat landed in; Mr. Saunders came down with a party—a big crowd of them, 10 or 12 men, with a logging outfit to come on the island. I objected very seriously but had been instructed to use no violence, and I saw the only way to hold it was to go at it in a violent manner, and owing to the instructions that had been given me, I had to let them come on.

Int. 21. Who was Mr. Saunders?

A. He was a timber man and cutting timber and working for Moore & McFerrin.

Int. 22. State all that you did, if anything, relative to preventing Mr. Saunders and his outfit from going on the land; and state especially in connection therewith whether you did everything in your power relative thereto short of resorting to arms and the necessity of killing someone.

A. I told Mr. Saunders that he could not come on the island; I objected to him coming very seriously, used every means I could, still I could not get him to go back; and after talking with him some time I saw there was no use talking any longer, for he was coming there and the only way to keep him back was to kill some one and I had been positively instructed by Mr. Scott not to hurt anyone.

Int. 23. State what you said to Mr. Saunders during the conversation referred to by you with him.

A. I told him that I was there in possession of the island; that I had been instructed not to let anyone come on and to keep them off, and that I would have to make him go back; that he could not stop there; and talked to him about that way all along. I finally got angry with him a little, but did not say anything; and after I saw my little game would not work, I had to let him come on.

377 Int. 24. In other words, state whether or not it was by force that Mr. Saunders took possession of this island in this: That in order to have prevented him from coming you would have had to have killed him.

A. Yes sir.

(Complainants' counsel objects to the foregoing question and any answer made because strictly leading.)

Int. 25. Returning now prior to the time that Mr. Saunders came on the island, as above referred to, state whether or not Mr. C. W. Orton at any time evinced any interest in assisting you to prevent trespassers from coming on the island, and the circumstances in regard thereto.

A. Yes; Mr. Orton did on several occasions come to my tent and wake me up during the night when he thought that a boat was going to land and he would go with me to the river—get his shot gun and go out with me. On one occasion the "Hill City" pulled in and they tied up on account of darkness; he got his gun and went down with me that night and told me to go down to the edge of the boat and see who was going to get off; said he thought they would move up around in above us and get off before we would see them.

Int. 26. State whether or not that subsequent to your taking possession of the island and prior to the time of Mr. Saunders' coming on the island forcibly, as stated above by your testimony, if anyone came on the island and was required to leave by you, and state the circumstances and what, and who the parties were.

A. Yes, there was a party came down—some men came to work for Mr. Saunders they said; they came down the river in a shanty boat, and I told them that I was in possession, and also told his foreman, Mr. Sharp, who was in charge of the crowd, and made them move over to the main land on Mr. Rife's property across the shoot.

Int. 27. State whether or not you went all over the island several times or not during your stay there.

A. Yes, I was all over it a dozen times.

Int. 28. State whether or not there was any property located on the island belonging to Moore & McFerren that you could observe.

378 A. Well, sir, there was nothing on the island at all that you could call property, unless you could call a few old logs that had been cut down—probably 100 or 150; that is about all I saw.

Int. 29. Mr. Claud H. Moore in a deposition taken in this cause states as follows: "There was left on the island a skiff, 500 or 600 logs ready to haul; all the frame work for the fronts, and the tents that we had there; the frame and everything belonging to the front and tent, excepting the flies, were there;" and further states in said examination, "The tent frame work, or rather the tents were floored in and walled up to about four or five feet high and poles were put up over each to throw the fly for a roof; the front was a frame work of poles so as to hold up the cloth part of the roof, and the stables and mangers were made out of posts and other stuff." Now state whether or not, Mr. Jones, there was a frame work, etc., stated by Mr. Moore to have been there, and state whether or not there was a skiff, the property of Moore & McFerrin there, and state whether or not the number of logs indicated, so far as you were able to observe, is correct.

A. No sir, there was no frame works of any tents; there was nothing to indicate that there had ever been a camp on the island, except the camp that old man Wilson and his son lived in. They never floored their tents; did not have any flooring; if they did they didn't leave it there. There was between 100 and 150 old logs that was left scattered about in the woods all over the island, and there were no mangers, corral frames and tent frames—nothing of any kind on the island; there was no sign of any camp ground at all.

Int. 30. State whether or not you saw the skiff above referred to.

A. No sir, there was no skiff there. Mr. Saunders had a skiff, but he sold it to old man Wilson, who sent it down to his son before they left there; his other son down on Catfish Point.

Int. 31. When Mr. Saunders returned to the island state what kind of tents, or camping ground they put up, corrals, etc.; and state whether or not these tents, corrals, etc., were erected anew.

379 A. Yes, they were built right new out of new cottonwood poles, the corrals was, and the tents had no floors in them, and

the only plank that was around the camp was some that was used on one or two of the tents; they nailed or spiked on two plank around two tents, a base plank around the kitchen tent and a negro sleeping tent; they built the corrals out of new poles; I saw them do it.

Int. 32. Where did Mr. Orton stay during the time he was on Island 76?

A. From the time I got there for over a month he stayed with old man Wilson and his boy and myself; eat there with us and slept in old man Wilson's tent; I had a tent of my own I slept in and cooked and eat in.

Int. 33. State when he left your camp, if he left, and where he went, if you know.

A. Yes sir, he left our camp; I don't remember the exact time he left.

Int. 34. Was it after Mr. Saunders came?

A. Yes sir, the latter part of September and he went down to Mr. Saunders. I don't remember just exactly when it was, but it was just after Mr. Hubert Wilson came down there. Mr. Orton was a sort of a dead head and we wanted to get rid of him, and we just agreed to go in and put up the money to live on, and Mr. Orton did not have the money to come up with, and we told him that he would have to come up with his part, as we were unable to feed him any longer. He went down to Saunders to get work, and went down and got work from him.

Int. 35. State whether or not you ever saw Mr. Orton after he had gone down to work for Mr. Saunders, and state the circumstances and the conversation, if any, that you had with him.

A. I never saw Mr. Orton for about a week after he left our camp. He would go out to work before I would get up, and I never went down to the camp at night; and he came up one night to my camp, and went with me down to the river and told me that he had neglected to tell me when I came there that he had charge of that island for Moore & McFerrin, and that he had come up to tell me
380 that he was the man in possession and not me, and that he had been in possession of it for some time.

Int. 26. That was how long after he had been working for Mr. Saunders?

A. About a week.

Int. 27. State whether or not that was the first time that you had ever heard of such a claim on the part of Mr. Orton.

A. Yes sir, it was the first time he had ever said anything to me about having possession of the island.

Int. 28. Who was the lighthouse keeper?

A. Mr. Palmer Wilson.

Cross-examination:

Reserving exceptions to the foregoing deposition, or any part of it for relevancy and irrelevancy, D. E. Myers, counsel for the complainant, proceeds to cross examine him.

Cross Int. 1. What was the necessity and occasion for you to go to the island in August, 1899?

A. Well, sir, I went down to take possession of the island; was sent down by Mr. Charlie Scott.

Cross Int. 2. Did you take a gun with you?

A. Yes sir, and a cooking outfit, bed and servant.

Cross Int. 3. Did you take a shot gun or winchester rifle with you and a pistol?

A. I did, a 45 Colt's pistol, and a shot gun to hunt with.

Cross Int. 4. Did you also have a Bowie knife, or what is known as an Arkansas Toothpick?

A. I had no use for anything like that. I would not want to take a knife to get after such people as came down there.

Cross Int. 5. You were instructed to go there and hold the island against all hazards against outside intrusion, were you not?

A. No sir, I was not; I was instructed to hold it quietly and peaceably.

381 Cross Int. 6. Were you obeying instructions the night Saunders and his logging outfit attempted to land?

A. I did not have any instructions until after that time.

Cross Int. 7. Do you call that quiet and peaceable when you got out your guns and pistols, and marshalled all forces on the island, and stationed your men behind trees and in the thickets with instructions to kill whoever came on the land?

A. I said I did not have those instructions until after that time.

Cross Int. 8. Without any did you do so?

A. I did it without any, yes sir.

Cross Int. 9. What date was it that Moore & McFerrin's boat attempted to land?

A. I don't remember just exactly.

Cross Int. 10. About how long after you arrived there—how many days?

A. About 10 or 12 days.

Cross Int. 11. When you went to the island you knew that Moore & McFerrin's logging outfit was expected to arrive there any day, did you not?

A. No sir, not when I got there; was not looking for them at all; did not know they were coming until they were down there.

Cross Int. 12. You watched every steamboat and skiff or house boat that attempted to land, did you not?

A. Yes sir, I did.

Cross Int. 13. That night that Mr. Saunders first arrived and attempted to land, what time night was it?

A. It was about between 10 and 11 o'clock.

Cross Int. 14. When you heard the steamboat whistle you got the whole force on the island with their guns and pistols and went down to the boat, did you not?

A. I did not hear the boat whistle at all. Mr. Orton come and woke me up and told me that he thought the boat was going to land and he would go down with me and help keep them off.

Cross Int. 15. Keep who off? Who were you expecting?

382 A. Anybody that came on the land, also Mr. Saunders; that was after we expected Mr. Saunders any day.

that was after we expected Mr. Saunders any day.

Cross Int. 16. And that outfit arrived and you marshal*l*ed your armed forces in advance within three or four days after you arrived?

A. I did not marshal*l* them at all; this was some 10 or 12 days after I had been there. Mr. Orton was the man that notified me that the boat was coming to land.

Cross Int. 17. You were then expecting Mr. Saunders?

A. Yes sir.

Cross Int. 18. How long had you been expecting him before that night?

A. Only a few days. He had some men, as I stated, to come down the river in a shanty boat, and I had them to move across the shoot to the main land.

Cross Int. 19. How many days was that after you arrived that Mr. Sharp and the fish boat, or whatever boat it was, attempted to land and you prevented him from doing so?

Mr. JONES: How long was it after I was there?

Mr. MYERS: Yes sir.

A. I had been there 8 or 9 days. Mr. Sharp came down on Sunday I got there—Sunday afternoon, and this was on Tuesday night boat trip.

Cross Int. 20. You knew that Moore & McFerrin and Saunders had been cutting logs and shipping them from that island during the fall and winter of 1898, and the spring of 1899, did you not?

A. I knew that some one had been.

Cross Int. 21. As soon as you went to the island did you not inquire who had been cutting that timber?

A. No sir.

Cross Int. 22. Did nobody tell you?

A. No sir.

Cross Int. 23. Did you coun*d* all the logs; the trees that were cut down and lying on the island?

A. No sir, I did not count them.

383 Cross Int. 24. Then there might have been more than 150, might there not?

A. No sir, I don't think there was.

Cross Int. 25. If you never counted them you positively don't know, do you?

A. I hardly think there were 150.

Cross Int. 26. You say they were scattered all over the island, is that so?

A. Yes sir.

Cross Int. 27. In your examination in chief you say that these 150, or whatever logs there were there, they were saw logs, were they not, and had been cut down for the purpose of shipping, you call them old logs? Now, don't you know that they were cut in the spring of 1899?

A. I don't know when they were cut.

Cross Int. 28. Well, you don't mean to say they were old and rotten logs, do you?

A. The bark was rotten.

Cross Int. 29. But you did find out finally that they had been cut by Mr. Saunders?

A. Yes sir, I did.

Cross Int. 30. For Moore & McFerrin?

A. I don't know who they were cut for.

Cross Int. 31. Well, you do know that Saunders was logging for Moore & McFerrin, did you not?

A. Yes sir, I found that out.

Cross Int. 32. You did know that Moore & McFerrin claimed the island, did you not?

A. I afterwards found it out; I did not know when I went there.

Cross Int. 33. You knew it when Mr. Sharp and the boat came down; I mean the boat that you made go across the river to Mr. Rife's land, did you not?

A. I don't remember whether I knew it then or not.

Cross Int. 34. You say there was no skiff there belonging
384 to Moore & McFerrin?

A. Yes sir.

Cross Int. 35. There was no skiff there at all?

A. Yes, we had several skiffs.

Cross Int. 36. You don't know that they did not belong to Moore & McFerrin of your own knowledge?

A. One of them belonged to Mr. Orton, and one of them belonged to Palmer Wilson.

Cross Int. 37. Well, how do you know that one belonged to Mr. Orton except what he told you?

A. He said he came down the river in it; said he brought it from Ortonville, Minnesota. It had Ortonville on it.

Cross Int. 38. Well, all you know about the other skiff, the one that belonged to Palmer Wilson that he sent to his son, was what Wilson told you himself, was it not?

A. I saw the skiff and it had Saunders' name on it, but old man Wilson told me that he had bought it from him.

Cross Int. 39. That is all you know about it?

A. Mr. Saunders did not send for the skiff after he came back.

Cross Int. 40. How long did you remain on the island as an armed force after Saunders came?

A. I did not remain there as an armed force at all. I stayed there about, I don't remember just exactly how long—three or four weeks or perhaps two or three weeks.

Cross Int. 41. What date did you leave, Mr. Jones?

A. I left there on the 12th of November—12th of November or 12th of October, I don't remember which.

Cross Int. 42. Had you ever been on the island before that trip?

A. Never had, sir.

Cross Int. 43. What was the occasion of your leaving the island?

A. Mr. Charles Scott wrote me and told me that the island had

been turned over to the officers of the federal court, and my services were no longer needed down there.

385 Cross Int. 44. What relation are you to Mr. Scott?

A. None whatever.

Cross Int. 45. Mr. Jones, are you certain that there were no signs of a foundation, or place where there had been tents, and a corral or stables for a logging outfit, that left there in the spring of 1899?

A. There was absolutely no place in the world that showed that there had been a camp there; and nothing in the world in the shape of a tent besides the tent that old man Wilson lived in and the one that I had there. There was no tent posts standing, or carral posts, no foundation, nothing at all.

Cross Int. 46. No signs that there had ever been a tent there?

A. No sir.

Cross Int. 47. And no sign that these people lived there in the fall of '98 and spring of 1899, and had left there in the latter year?

A. I don't know; the water had been over it.

Cross Int. 48. The water had washed over it?

A. Yes sir.

Cross Int. 49. Then if they were there, it is probable that they might have been there and washed away by the overflow?

A. I don't think they would have washed away if they had been in the ground.

Cross Int. 50. Do you know where Mr. C. W. Orton lives?

A. No sir, I do not know; he told me his home was in Ortonville, Minnesota.

Cross Int. 51. What date was it when Mr. Saunders actually landed his logging outfit on that island?

A. I don't remember whether it was Sunday or not; I don't remember just exactly the date.

Cross Int. 52. I understood you to say that when he attempted to land the first time it was 9 or 10 days after you arrived there. Was that correct? I mean the night of the boat; that is the night of the war.

A. Well, there was not exactly any war. It was 10 or 12

386 days after I arrived there the Kate Adams run in there to put off the outfit.

Cross Int. 53. Now how many days after that until Mr. Saunders returned with his outfit and landed on the island?

A. I think it was the following Sunday; I don't remember the exact date.

Cross Int. 54. Was it not day time that time they landed?

A. Yes sir.

Cross Int. 55. Did you see and talk to Mr. Saunders the first time he attempted to land?

A. No sir, Mr. Saunders was not with the outfit at all; Mr. Sharp was there, his foreman.

Cross Int. 56. Did you talk to Mr. Sharp?

A. Yes sir.

Cross Int. 57. Did he not tell you that it was Moore & McFerrin's outfit and that the island belonged to them?

A. That was what he told me.

Cross Int. 58. Mr. Saunders told you the same thing when he came back the second time, did he not?

A. He said something like that.

Cross Int. 59. The night of the landing, or attempted landing, did each of the parties you have mentioned who were with you, have shot guns and pistols?

A. Yes sir.

Cross Int. 60. After Mr. Saunders went to work on that island you excluded C. W. Orton from your mess, because he would not put up the money, did you not?

A. Well, we had taken care of him all the time I had been there, and I thought he might as well get out and work for his grub as me, and I did not feel able to feed him, and the other boys felt like I did.

Cross Int. 61. And he told you he had been left in charge of the island for Moore & McFerrin?

A. After he had gone down there to work and had been
387 there about a week he told me that.

Cross Int. 62. He said he had neglected to tell you that fact at first?

A. Yes sir.

Cross Int. 63. C. W. Orton, you say, lived with Palmer Wilson on the island?

A. Yes sir, and with Palmer Wilson's father.

Cross Int. 64. Who did you say was looking after the light-house?

A. Palmer Wilson.

Cross Int. 65. Well, did C. W. Orton assist Palmer Wilson in looking after the lighthouse?

A. No sir.

Cross Int. 66. You don't know what he did before you went there?

A. No sir.

Cross Int. 67. Well, did he not assist in looking after the lights sometimes?

A. No sir, I don't think he did. The old man and boy himself attended to that part of the work; Orton was always out looking after his fish and seines.

Cross Int. 68. You don't know what Mr. Orton did before you went on the island?

A. Well, I heard old man Wilson say he was too lazy to do anything but fish.

Cross Int. 69. Mr. Jones, that logging party that attempted to land the first night were rather wise in not coming ashore, were they not?

A. Yes, I expect it was a good thing that they did not come ashore.

Redirect examination:

Int. 1. When you were first sent to Island 76 by Mr. Scott to take charge of it, state whether or not he explained to you that
388 Island 76 was the property of his clients, and he desired to hold it for them just the same as one of the managers on his plantations held possession of the property for him; and was it not with that understanding that you went to take possession?

A. Yes sir.

Int. 2. Knowing, therefore, that the island was the property of Mr. Scott's clients, and you having taken quiet and legal possession of same, and you being in possession for these clients, you deemed you had the right to repel any trespassing of any one soever even if necessary to do so, you would have had to resort to violence.

A. Yes, I thought it was my business to keep them away, and I did it first talking to them and told them not to come on, but they said they were coming anyhow, and I thought it was my duty to keep them back, and I did so.

Int. 3. When Mr. Saunders finally came on the island, state whether or not it is a fact that Mr. Scott had informed you to resist his trespassing up to the point of killing him, but instructed you not to go to the extent of violence.

A. After the first resistance, the night the boat landed in short, I reported to Mr. Scott very early next morning what I had done the prior evening, and he told me whatever I done not to hurt anybody, and not to have any trouble; and he instructed me positively not to hurt anyone; to hold the island as long as I could without any trouble, and under these instructions I held the island as long as I could.

Int. 4. State whether or not the shoot, as it is termed, by which I mean the shoot between the island and the main land of Mississippi, in a low stage of water in the Mississippi River, can be walked across, or ridden across.

A. In low water it can be walked and ridden across at most any point; that is the way Mr. Saunders entered with his teams.

Recross-examination:

Cross Int. 1. You were not living there in 1847 and 1850,
389 were you, Mr. Jones?

A. I don't believe I was.

Cross Int. 2. You don't know how it was then?

A. I do not.

(Signed) C. L. JONES, JR.

Endorsed: Filed May 22, 1902. W. P. Feild, Clerk.

W. J. SHACKLEFORD, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by Mr. A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. W. J. Shackleford; age 32; residence Rosedale, Mississippi; occupation, civil engineer.

Int. 2. How long have you been a civil engineer, Mr. Shackleford, and what experience have you had? State in a general way with regard; first, to any employment whatever on the levees and Mississippi River; second, relative to surveying.

A. Well, I don't know exactly what you would mean by how long I had been a civil engineer. I have never done anything else; never followed any other profession, and of course, I started young, at 18 years old; as soon as I left school. So you might say that I have been in the profession for about 14 years.

Int. 3. State whether or not you have done any surveying and platting and the general work relative to laying off and mapping lands, etc., during that time.

A. I have done nearly every kind of surveying.

390 Int. 4. How long, Mr. Shackleford, have you been living in the Delta?

A. Since October, 1892.

Int. 5. During that time did you, or not, live along or near the banks of what is known as the Mississippi River?

A. Yes, I have always been on levee work and bank surveys.

Int. 6. In whose employ were you?

A. For the first seven years I was in the employ of the United States Government.

Int. 7. And after that?

A. The Mississippi Levee Board.

Int. 8. Mr. Shackleford, I hand you the field notes of Township 21, range 8 west of Bolivar County, consisting of Exhibit B to the deposition of E. H. Nall in this case, and bearing the marks "Diamond 17-F" and "Diamond, 8-B"; and I also hand you a map of Township 21, range 8 west of Bolivar County, Mississippi, attached to the deposition of E. H. Nall filed in this case and marked Exhibit C, said map being dated May 31st, 1830, and signed by Joseph Dunbar, Surveyor South of Tennessee. Have you ever seen these field notes and maps before? And if so, state when and under what conditions, and for what purpose they were handed you.

A. Mr. Scott gave them to me several days ago to look at and see if the plat corresponded to the field notes, which I did, examining them carefully, and find that the plat does correspond exactly with the field notes.

Int. 9. State whether or not you made any independent tracing of Island 76 from the field notes handed you and of the bank line of the mainland in township 21, range 8, and state what you ascertained relative to the accuracy of the map filed as "Exhibit C" attached to Mr. Nall's deposition.

A. I made an independent plat from the notes of the river bank

and a traverse of the Island from the notes, not a tracing, and after comparing it with the map itself, and found them to agree.

Int. 10. When you say that you made an independent plat from the field notes, you mean from the Exhibit B handed you and
391 attached to Mr. E. H. Nall's deposition, do you not?

A. Yes sir.

Int. 11. You should then say that the map marked Exhibit C and attached to Mr. E. H. Nall's deposition, was taken and platted from the field notes of Township 21, range 8, which consists of the whole of Exhibit B, attached to Mr. Nall's deposition?

A. Yes sir.

Int. 12. Have you scaled the distance from Island 76 across the shoot to the main land or not?

A. I have; I have forgotten the exact distance, but have the scale with me and can scale it now.

Int. 13. Please scale the distance from Island 76 to the mainland in township 21, range 8, and state what that distance is in chains and in feet.

A. Well, the narrowest point is about on the line lying at the river bank between lots one and two of section 4; the distance measures about 8 chains. Of course that is a close approximation scale measurement.

Int. 14. How much is that in feet?

A. 528 feet.

Int. 15. In scaling the distance across the shoot you measured from the bank of the Mississippi River on the line between lots 1 and 2 in section 4, directly across to lot 8 in section 36 of Township 21, range 8, did you not?

A. Yes sir.

Int. 16. I believe you stated, Mr. Shackleford, that you made from the field notes an independent tracing of the plat; and I believe you also stated that in comparing the plat made by you with the map handed you here, filed as Exhibit C to Mr. Nall's deposition, that you found them to tally, did you not?

A. Yes sir.

Int. 17. I now ask you to file with your deposition the field notes of township 21, range 8 west in Bolivar County, Mississippi, marking same as "Exhibit A."

A. I do so.

392 Int. 18. I ask you to file the map of township 21, range 8, west to your deposition, marking same as Exhibit B.

A. Yes sir, I do so.

It is agreed by counsel for complainant and defendant, that it will not be necessary to make new copies of the notes and map to attach them to Mr. Shackleford's deposition, but that they will be considered as filed, being attached Exhibits to Mr. E. H. Nall's deposition heretofore filed in this case.

Int. 19. Where, Mr. Shackleford, is Island 76 in the Mississippi River located?

A. It is just above Bolivar Landing and is the second island below the mouth of the Arkansas River.

Int. 20. What is the first island below the mouth of the Arkansas River?

A. Ozark Island.

Int. 21. Ozark is number what on the Mississippi River Commission maps?

A. On the Mississippi River Commission maps it is numbered 75.

Int. 22. State whether or not the banks of the Mississippi River are highest immediately on the bank, or at a distance away from the bank?

A. They are, that is the general rule—the bank is higher at the river than anywhere else, and slopes back; the drainage all goes back from the river.

Int. 23. The whole drainage then of the Mississippi River and other alluvial streams as well, so far as you know, is back from the river?

A. Well, I only know that from the general rule, and only of the Mississippi River.

Int. 24. That is the case of the Mississippi River?

A. Yes sir.

Int. 25. Does that rule, or not, apply to islands as well as to the main land of rivers?

A. Yes sir, it generally does.

393 Int. 26. The highest part of the island being situated where?

A. On the channel side.

Int. 27. I hand you a part of Exhibit B to Mr. Nall's deposition marked "8-B," consisting of the field notes of Island 76. Examine this please and state what is the highest part of Island 76 from the field notes at the date they were made?

A. Well, I find here in the field notes beginning at the upper end of the island the first course is south 28½ west, showing that the traverse went down the west bank of the island; then there is a description of the bearing, and as usual, a description of the land passed over. In that course he says, "35 chains enter cane, above high water mark." Then he does not mention the ground for several more courses. The next course I see he says: This line was open woods with vines and briars and in places above high water mark. In the remarks at the end of the surveyor's notes of the island, I see he says: "North and west side is mostly cane, above high water mark; soil very good."

The foregoing question excepted to by complainant's counsel as incompetent, because a mere repetition of what the field notes show themselves; they being the best evidence.

Int. 28. State if you know, Mr. Shackleford, the custom relative to clearings along the banks of streams, especially with reference to where said clearings are usually made? Whether immediately on the banks, or a considerable distance from same?

A. Well, they are generally made right on the banks, as a matter of convenience.

Int. 29. Where clearings are made on an island for instance, such

as Island 76, state which side of the island they would in all probability be made upon.

(The foregoing question excepted to by counsel for complainant, as incompetent; because, first, calling for the opinion of the witness, and asking for the conclusion of a fact.)

A. Clearings would more likely be made on the channel
394 side, because the ground would be higher near the channel, also on account of convenience for landings.

Cross-examination by Mr. D. E. MYERS:

Complainants, by attorney, reserving all exceptions to each part of the foregoing deposition, the questions as well as the answers thereto respectively, proceeds to cross examine subject thereto.

Cross Int. 1. What special surveying have you done in the Delta since 1892?

A. What kind of surveys do you mean?

Mr. MYERS: That's what I am asking you. What is the character?

A. I have made surveys of caving banks; I have made surveys for new levees; and I have made numerous surveys to locate section lines.

Cross Int. 2. What particular line of duties did you perform whilst in the Government employ?

A. Levees. I was on levee work and surveys of caving banks, and surveys for new lines and topographical surveys.

Cross Int. 3. Well, what have been your duties with the Levee Board—simply surveys for the levee lines?

A. No sir. I have had considerable of what you may call land surveying, locating property lines, because the Levee Board has rights of way to deal with and the Government does not; and since I have been in the employ of the Levee Board I have had to do a good deal of land surveying, locating section lines. I have also done private work outside of my duties.

Cross Int. 4. What position did you occupy with the Government? Were you Chief Engineer with the Government?

A. No sir. Do you want to know what position I occupied?

Cross Int. 5. What position did you occupy respective to the Government?

395 A. I occupied the position of an Inspector. The duties are about the same that I now have with the Levee Board as Assistant Engineer.

Cross Int. 6. Those duties as Inspector—what were they?

A. Well, I did surveying; I was in charge of the work. I made surveys of proposed work—levee work—and made surveys of caving banks; surveys for new levee lines, and as I stated a while ago, topographical surveys in connection with them.

Cross Int. 7. You have stated that you have examined the field notes shown you, and the map shown you, and that the field notes corresponded with the map.

A. Yes sir.

Cross Int. 8. Or the map with the field notes?

A. Well, the map with the field notes, or the field notes with the map, either way you want to put it; the two correspond.

Cross Int. 9. Well, did you make an independent survey to test the existence of the lines yourself?

A. No sir.

Cross Int. 10. Or did you simply compare it with the field notes?

A. Made a plat by the field notes on a separate sheet of paper, then compared my plat with that plat.

Cross Int 11. Made no actual survey at all?

A. No sir.

Cross Int. 12. Then all you did was to compare the field notes with the map?

A. That's all.

Cross Int. 13. As a matter of fact you do not know then whether the different lines on this plat on the Mississippi side of the River are correct or not by actual survey?

A. I know that the section lines are. I have run out several of these lines there on that bank and the shoot between Island 76 and the main bank in the last few years. I know that the bank line would not correspond now with the map.

Cross Int. 14. The bank line would not correspond with the map?

396 A. No sir, the bank lines as they exist would not correspond with the bank lines shown on the map, because the banks have caved since that map was made.

Cross Int. 15. There has been considerable caving there between Island 76 and the Mississippi side, has there not?

A. Yes sir.

Cross Int. 16. About what distance has it caved back, do you know?

A. No sir, I would not know without consulting a plat, or something of that kind. I have not my notes; it has been four years since I made any survey there, but I know it was considerable distance. It would be guess work for me to state.

Cross Int. 17. Over 100 feet?

A. Yes sir.

Cross Int. 18. Over 200 feet.

A. Yes sir, over 200 feet.

Cross Int. 19. To your best recollection about what distance?

A. To the best of my recollection it must have been 500 or 600 feet.

Cross Int. 20. That it had caved back since the original survey as indicated by this map?

A. Yes sir.

Cross Int. 21. As to Island 76 itself, did you make any survey of the actual island to see how it now corresponds with the field notes?

A. No sir.

Cross Int. 22. You gave the width of a shoot, as you call it as 528 feet?

A. Yes sir.

Cross Int. 23. Was that at the narrowest point?

A. Yes sir.

Cross Int. 24. That was at a point about two thirds of the way down the island, was it not?

A. Yes sir.

397 Cross Int. 25. Is there any clearings on the Mississippi side opposite Island 76, and farms there, or a farm?

A. There is a strip of woods along the bank, just back of that strip of woods—the land back of the levee is all cleared.

Cross Int 26. There is no cleared land then between the levee as it now exists and the bank of the river?

A. Yes there are. There are one or two little places that have been recently cleared.

Cross Int. 27. In the last four or five years?

A. They have been cleared of second growth timber in the last four or five years. The timber on that bank is all second growth cottonwood.

Cross Int. 28. How far is it from the levee to the east bank of the Mississippi River opposite with Island 76? I mean feet.

WITNESS: About the average distance all the way up, you mean?

Mr. MYERS: Yes.

WITNESS: It will not average one quarter of a mile, about one fifth of a mile, I would judge.

Cross Int. 29. Just east of the levee opposite with Island 76, you say it is all cleared?

A. Yes sir. I mean the land that adjoins the levee. Of course I do not mean all the land that lies directly east of that.

Cross Int. 30. Did you ever do any surveying on Island 76 at all?

A. No sir.

Cross Int. 31. You know very little about the topography of Island 76?

A. I know a good deal about it. I have been all over it a good many times.

Cross Int. 32. Any cleared lands on it?

A. There was a few years ago a little clearing on the upper end but I think it has been abandoned.

Cross Int. 33. Do you recollect what time that clearing was made?

A. It was there when I first saw the island, an old house on it.

Cross Int. 34. What date was that?

398 A. It was in 1892, the first year I came to the swamp.

Cross Int. 35. That was at the head of the island?

A. Yes sir.

Cross Int. 36. That is all unoccupied now?

A. I am not positive about it; I think it is.

Cross Int. 37. How long since you were on the island?

A. Been about five years.

Cross Int. 38. An examination of the field notes, which you have exhibited would they correspond now as it now exists?

A. No sir, they would not. The island has moved eastward

since the survey was made. It caved on the west side and built to the east.

Cross Int. 39. Caved on the west?

A. Yes sir.

Cross Int. 40. That the Arkansas side, the west side?

A. Yes sir.

Cross Int. 41. Is the island caving there now?

A. It was the last time I saw it.

Cross Int. 42. You spoke of considerable caving, however, going on on the Mississippi side opposite the island. During what period have you seen that caving—has come under you own observation?

A. There has been no caving there whatever since I have known the island.

Cross Int. 43. I don't speak of the island.

A. There has been no caving on the main bank since I have known it.

Cross Int. 44. Of course, you don't know anything about the situation of affairs of that island 30 or 40 years ago?

A. No sir, not by personal observation.

Further deponent saith not at this sitting.

(Signed) W. J. SHACKLEFORD.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

For Exhibit A to this deposition see Exhibit B, folio 341 this record.

For Exhibit B to this deposition see Exhibit C, folio 367 this record.

399 WILLIAM MCC. ANDREWS, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Direct examination by Mr. A. Y. SCOTT:

Int. 1. State your name, age, residence and occupation.

A. William McC. Andrews; 36; Greenville, Mississippi; civil engineer and surveyor.

Int. 2. How long have you been a civil engineer?

A. I have been in the surveying business in various capacities since 1890.

Int. 3. What position, if any, do you now hold, and with whom?

A. I am employed at present, and have been for the last 4 or 5 years with the Mississippi Levee Board as Assistant Engineer.

Int. 4. What are your duties in that capacity?

A. Surveys of river banks; levee surveys, construction work. While I am employed by the Board, on the outside occasionally land surveys.

Int. 5. You are familiar with the Mississippi River its banks and

channel, in the usual work relative to construction of levees and so on, are you?

A. Yes sir in this district. From the upper Bolivar County line down to the neighborhood of Vicksburg.

Int. 6. State what you know to be a fact, Mr. Andrews, relative to the heights of banks of alluvial streams generally, and especially with the Mississippi River, with reference to whether it drains into or from the Mississippi, and whether the land is higher on the immediate banks, or back from the river.

A. The banks on all alluvial streams with which I am acquainted are generally higher at the bank of the river, than further away from it. Locally in some cases the bank may be a little lower, but as a rule higher.

Int. 7. Is that applicable to islands in the Mississippi River as well?

400 A. Particularly so to islands.

Int. 8. The highest part of the island then is where?

A. Is at the side next to the channel of the river, wherever the channel has remained for a long time on that side of the island.

Int. 9. You mean by that if there should have been an extensive cut off of the river, that probably for a time the land immediately next to the river would be lower?

A. Yes sir, and adjacent to the cut off; but after a term of years it would become higher again from deposits from the river.

Int. 10. I hand you, Mr. Andrews, a map bearing the certificate of Binger Hermann, Commissioner of the Land Office and Ex-officio Surveyor General, which has the following certificate to it: "Surveyor's Office, St. Louis, 22nd June, 1821," signed by Wm. McRee, Surveyor of Public Lands in Illinois, Mississippi and Arkansas. Please examine that map, and state by whom the survey was made and when.

A. The map states that it is a plat of fractional townships 11 and 12 south of the base line, range 1 East of the 5th Principal Meridian; survey made in February, 1827, by Daniel Miller, Deputy Surveyor.

Int. 11. Now please state whether or not Island 76 is sectionized in that map or not.

A. It is not.

Int. 12. The island is noted on the map, is it not?

A. Yes sir.

Int. 13. Where, from that map at that date, was the channel of the Mississippi River?

A. Between the island and Arkansas.

Int. 14. In other words, the channel is west of the island.

A. Yes sir.

Int. 15. Is the distance across the main river above and below the island given on the map?

A. No sir, it is drawn to scale, and points on the island have been located by triangulation from the Arkansas side.

Int. 16. By means of the triangulations from the Arkansas
401 side, could not the distance to the Mississippi bank be ascertained?

A. Yes sir, by triangulation of scale.

Int. 17. Then does not the map give the width of the river bank above and below at the point indicated by the triangulations?

A. Certainly.

Int. 18. What is the width of the river opposite the east side of section 19, 11-1 East?

A. 55 chains.

Int. 19. What is the distance across the river opposite the Northeast quarter of section 28 of township 11, range 1 East?

A. 50 chains.

Int. 20. What is the distance across the river at the Southwest corner of section 4, township 12, range 1 East?

A. 36 to 37 chains, about 36½ chains.

Int. 21. Now, what is the distance across from the northeast corner of section 34, township 11, range 1 East to the northern point of the island?

A. 89 chains.

Int. 22. What is the distance from the quarter section of the township line between 11 and 12, range 1 East, across the channel to the main bank?

A. 81 chains.

Int. 23. What is the distance across the river from about the middle of section 3, — 12, 1 East to the foot of the island?

A. 77 chains.

Int. 24. From that map, what is the distance from the east bank of the island across to the main shore opposite?

A. It is 22½ chains.

Int. 25. That distance is not an actual measurement as the other distances above referred to, but is an estimate curvature from the fixed points on the Mississippi and island banks at either end of the island, is it not?

A. Yes sir. The method probably adopted by the surveyor in that case was to triangulate to one bank, either the island bank or the Mississippi bank, and then by estimating the distance to
402 space the other bank; from that getting, the approximate width of the channel on that side.

Int. 26. In other words, though the distance between the east bank of the island to the Mississippi shore is not by actual measurement of the surveyor, it is, from the two points taken above on the Mississippi shore and the two points at the head and foot of the island, an estimate distance of the surveyor at that time?

A. That was not the meaning I intended to convey, exactly. The points at the foot of the island and at the head of the island and corresponding points on the Mississippi shore were carefully fixed by triangulation and the island bank, and the curve of the Mississippi bank was then sketched in; then the surveyor estimated from the bank, so fixed the width of the channel by eye measurement, and sketched in the other bank to correspond with that—the bank already fixed.

Int. 27. Now taking the map before you with the shore line fixed as there stated, where would the main current, or real channel of the Mississippi River be, of necessity?

A. On the west side of the map is a north and south line marked

at the head "A." That is the 5th principal Meridian, from which these townships are located in an east and west direction. I take it from the map that there was a caving bank on the Mississippi side opposite the upper end of that meridian, or point where the meridian intersected the right bank of the river at the letter A. The caving bank was on the Mississippi side opposite the letter A. That is shown by a curvature and concave bank on the Mississippi side. The current from this is deflected to the Arkansas side and struck on the face of section 19, 11,-1 E; following the Arkansas side, creating a caving bank down to the northeast corner of section 20, 11-1 East; thence deflected to the Mississippi side creating, as you see, opposite the letter "D" on the Arkansas side, and above the island, another concave bank which is on the Mississippi side; thnce passing down between the island and the Arkansas shore, creating a concave bank on the island and undoubtedly a caving bank, until it strikes below the island at a point on the Mississippi bank due south of
403 section 4,-12-1 East. Commencing below that point on the Mississippi bank a caving bank for an indefinite distance down, not shown by the present map. Further, the contour of the Arkansas bank shows that the current was not affecting it as it did the Mississippi bank and is round between the island and the Arkansas bank at section 34,-11-1 East in such a way as to show that the current had followed smoothly around that bank.

Int. 28. In case, at that date, the current or channel had been to the right of the island, state whether or not there would have been the caving bank on the Mississippi side just opposite sections four and five Township 12, range 1 East, or not.

A. No sir, there would not. Further the points shown on the map, the salient points in shore line at X and Y on the Mississippi bank would not have existed.

Int. 29. If the current had been to the right of the island?

A. Yes sir.

Int. 30. State where the caving would have been in case the current had passed to the right of the island with reference to the Arkansas shore line?

A. There would have been a caving bank and a concave bank of the river, front of section 27, township 11, range 1 East below the point marked "D," and a caving bank on the Arkansas side on the river, front of section 4-12-1 East.

Int. 31. The points marked X and Y on the map were made by you, were they not, Mr. Andrews, for the purpose of illustrating your former answer.

A. Yes sir, to show the location of certain points on the Mississippi bank.

Int. 32. Please file with your deposition as Exhibit A the map referred to.

A. Yes sir, I do.

Int. 33. I hand you, Mr. Andrews, map of township 21, range 8 west, Choctaw District of Mississippi, marked Exhibit C to the deposition in this case of Mr. E. H. Nall. Please examine same,
404 and scale the distance between Island 77 and the main shore of Mississippi.

A. The distance between the Mississippi main shore and the island varies.

Int. 34. Give the shortest distance first, and then the distance at the head of the island, as designated on the map.

A. The shortest distance is opposite the northwest corner of section 4, township 21, range 8, and is 8 chains. The distance at the head of the island *is* designated on the map is 29 chains.

Int. 35. Where does the main channel of the Mississippi River appear to run from that map, Mr. Andrews, taking that map as correct?

A. Taking that map as correct, the main channel of the river ran to the west of Island 76. It was apparently the intention of the surveyor, who made the survey, to convey that impression; for he has plainly marked the channel to the west of the island, "Mississippi River," and further has placed the customary arrow in that channel to show the course of the current.

Int. 36. Independent of the words, "Mississippi River" to the west of the island, and accepting the map as correct, and taking the distance 29 chains across from the Mississippi shore to the head of the island, and the distance 8 chains across from the Northwest corner of section four, township 21, range 8, across to the island, as correct at that date, state where the channel of the Mississippi River would of necessity have been with reference to Island 76, and state your reasons for so holding.

(The foregoing question excepted to by counsel for complainants first, as leading; second, as calling for an opinion of the witness; third, it calls for a conclusion of a fact.)

A. The map shows at the upper end of the island in the chute between the island and the Mississippi shore, that the chute is 29 chains wide. At the northwest corner of section 4, by which I mean the northwest corner adjacent to section 3, the scale shows that the chute is only 8 chains wide. If the depths were uniform throughout the chute, more water could enter at the upper end than could
405 pass through the throat at the northwest corner of section 4. That being the case, the current would be swiftest in the throat near the southwest corner of section 4, and sluggish at the upper end of the island. The consequences would be that the water entering at the upper end of the chute, charged with the sediment of the Mississippi would have its current slackened the moment it entered the chute and left the Mississippi River; and a slackening of the current would cause precipitation of all the heavier deposits carried. In consequence only the greater portion of the lighter sediment, and the water, would pass through the chute. That sedimentation in the upper end of the chute would only have one result; that would be the creation of a bar or shoal.

Int. 37. The bar or shoal then being at the upper end, state what of necessity would come of the main body of the water of the Mississippi River?

A. It would be compelled to pass to the west of the island.

Int. 38. State then whether or not it is a fact, that the width of

the island at the narrowest point, what you refer to as the throat, shows conclusively that the main body of channel of the river, could not have passed through the chute.

WITNESS: Do you mean the width of the island, or width of the chute?

Mr. SCOTT: I mean the width of the chute, and meant to so state in my question.

A. The reasons that I gave, conclusively prove to me, that the water of the Mississippi River, or the bulk of it, could not have passed through that chute. I know of no place on the Mississippi River within the reaches, from the Coahoma-Bolivar County line to a few miles below Vicksburg, where any great volume of the river's water passes through a chute, or space at low water, of anything like the width of that chute at the northwest corner of section 4, township 21, range 8; that width 8 chains, representing only 528 feet.

Int. 39. I ask you, Mr. Andrews, to file the map of township 21, range 8 west, shown you as Exhibit to Mr. Nall's deposition as Exhibit B to your deposition.

406 A. I do.

Int. 40. I hand you, Mr. Andrews, purporting to be a map of fractional sections 35 and 36 in township 11 South of the base line, which is dated Little Rock, Arkansas, 23rd December, 1846, and signed by William Pellum, Surveyor of Public Lands in Arkansas. This map being certified to by Binger Hermann, Commissioner of the General Land Office, Washington City. Please examine same and state where the Mississippi River ran at the date of the map with reference to Island 76.

A. Judging from the outline of the Arkansas shore, and the island shore, it passed west of the island, and between the island and the Arkansas bank. The surveyor in this case has also indicated that the channel, or the current of the Mississippi River lay between the island and the Arkansas bank by writing the words, "Mississippi River," plainly in that channel, and placing opposite the head of the island and in the channel the customary arrow to indicate the direction of the current.

Int. 41. Independent of the words and the arrow, the contour of the Arkansas bank and the bank of the island, indicate that the channel passed west of the island, do they not?

A. Yes sir; and not only that: Now at the date when that survey was made, it was customary to make clearings along the bank of the river first, because of their accessibility to means of transportation; and you will notice that the west bank of the island has several clearings located thereon; that being the portion of the island closest to transportation to the river; and also the ground which was highest and best adapted to cultivation in the day when there were not levees to protect the land from inundation. Further the surveyor in running these lines started a random line at the northeast quarter corner of section 34, township 11, south, 1 east: He ran south 24½ degrees east, 50 chains; thence south 18 degrees west, 21 chains. Then you see a course directly across the river, approximately at right angles to the banks bearing east, 47.29 chains. And now from my

acquaintance with the methods of surveyors, I would say that
407 he followed this plan to avoid cutting through the willows and bushes; starting at the point mentioned running out along the upper line, the first course. Then he laid off the second course south 18 degrees west 21 chains, and using that as a base line sighted from each extremity on the line, taking bearings on a point on the island bank, and then calculated that distance of 47.29 chains across the channel of the river.

Int. 42. He did that by triangulation?

A. By triangulation.

(The foregoing answer excepted to by counsel for complainant because it is strictly argumentative, and in the nature of a stump speech.)

Int. 43. Please file the above map with your deposition marking it Exhibit C.

A. I do.

Int. 44. You are familiar, are you not, Mr. Andrews, with the Mississippi River from Coahoma County line south to Vicksburg?

A. Yes sir.

Int. 45. Please state where Island 76 is situated?

A. The best way to locate that, would be to say that it is opposite and just above the town of Bolivar, Mississippi, and it is also the second island below the mouth of the Arkansas River.

Int. 46. What is the first island below the mouth of the Arkansas River?

A. That is known as Ozark Island.

Int. 47. And is numbered what on the maps of the Mississippi River Commission?

A. I think it is 75.

WITNESS: I might make one more statement with the consent of the parties interested.

Mr. SCOTT: Yes, what is it, Mr. Andrews?

WITNESS: It is that a number of years ago and recently, I was looking over one of the government reports; it was the report of the Mississippi River Commission for 1893. In that report I found several old maps. It is the report of Capt. Palfrey, Corps of Engi-
neers, U. S. A. There are maps there dating back to 1770
408 or 1775. In all those maps this island is shown, under different names, as Mulberry Island, Corn Island, and Island of Blood, in the same location in which it now stands, having the major portion of the channel on the west side of the island.

(Complainant excepts to the foregoing and last volunteered statement of the witness as incompetent, it being purely hearsay and what he has read from maps and reports, which if evidence at all, are the best evidence. Second, incompetent because it is the witness' opinion from the examination of what he has read in this book, and his ideas of what the maps show)

Cross examination by Col. D. E. MYERS:

Complainant, by attorney, reserving all exceptions to each part of the foregoing deposition, the questions as well as the answers thereto respectively, proceeds to cross examine subject thereto.

Cross Int. 1. I understand that you have been a civil engineer since 1891, is that correct?

A. I think I stated that I had been in various capacities engaged in civil engineering work since that time.

Cross Int. 2. In what capacity were you first engaged in and with whom?

A. Rodman and instrument man in the government surveys, Lake Providence reach below Greenville. This survey included location of bank lines, soundings and discharge observations.

Cross Int. 3. What particular duties did you perform at that time?

A. While there I ranked as a rodman, but my duties were almost all those of an instrument man.

Cross Int. 4. What do you mean by rodman?

A. It is generally the man who carries the rod in the surveying party.

Cross Int. 5. How long were you engaged in that survey?

409 A. I was engaged in that from October until late in December, or nearly the first of January the next year; that was from October '90 to nearly the first of January '91.

Cross Int. 6. Well, those surveys did not include the river at Island 76?

A. Not at that time, no sir.

Cross Int. 7. Where were you next engaged and in what surveys?

A. In levee work; from about Huntington down to the Washington County line below Offutts.

Mr. MYERS: I don't exactly understand from the points.

WITNESS: It was levee work on the Huntington point; construction work.

Cross Int. 8. Where is that at?

A. In the southern part of Bolivar County?

Cross Int. 9. That below Island 76?

A. Yes sir.

Cross Int. 10. Was from about October, 1890, to about January, 1891, your only experience with the United States Government?

A. No sir. I was employed with them almost continuously up until—I believe it was February, '96.

Cross Int. 11. In what locality were you employed during that last mentioned period to '96.

A. After a short time on levee work, the party whose place I occupied returned, and I was transferred to harbor work in the vicinity of Vicksburg, and Vicksburg Harbor, Mississippi.

Cross Int. 12. You continued there until 1896?

A. No sir.

Cross Int. 13. Well, how long did you remain in the harbor work?

A. I was in the harbor work at Vicksburg and vicinity until about

September, 1893, when I was placed on levee work on the Arkansas River, near its mouth, opposite Island 76.

Cross Int. 14. What were your duties, and what particular class of work did you do in the harbor at Vicksburg?

A. Well I had charge of the dredging—surveys prior to
410 dredging work; and the surveys upon the completion of dredging work; and shore lines; and surveys in relation to the channel of the river.

Cross Int. 15. The surveys of the dredging work; to what extent did that go, I mean the territorial limits of it from Vicksburg?

A. Well, the dredging work covered (the part I managed) about a mile; it covered about 1½ miles of canal. There was work besides that on the other side—shore lines, and shore lines on the Mississippi side.

Cross Int. 16. Did that represent the mile and a half?

A. During the time that I was there, there was the shore line on the Louisiana side that we kept up. We were required, you understand, to keep a correct record of the caving or change in shore line up above Vicksburg opposite Kings point.

Cross Int. 17. How many miles was that?

A. That was over three miles above the incline at Vicksburg point opposite Vicksburg.

Cross Int. 18. Well, after '93, what did you do from that time up to '96?

A. The government started the construction of the Arkansas River levees from just below Red Fork down the Arkansas River between Red Fork and Arkansas City. I was engaged there, first in surveys for the location of levees; surveys of abandoned levees and surveys of shore lines from the Lincoln-Desha County line on the north, south to a point almost opposite Rosedale, nearly opposite Terrene above here; that is shore lines on the Arkansas River, and also in '94-5 and 6 on construction work and on surveys in the vicinity.

Cross Int. 19. What do you mean by vicinity?

A. I mean the region from Red Fork down to what is known as the old elm tree opposite the town of Rosedale.

Cross Int. 20. Then this last work was on the Arkansas River.

A. The work to Feb'y '96 was on Arkansas River.

Cross Int. 21. From '96 up to the present time?

411 A. From '96 to '97 I was not employed in levee work, but was up in Missouri rusticating on my farm.

Cross Int. 22. From '97 down to now?

A. In '97 I was again employed in government surveys below Greenville, at Lake Lee and points below. My headquarters was at Lake Lee. I had supervision of the work as far down as——

Cross Int. 23. That was all below Vicksburg?

A. All that I did below Vicksburg.

Cross Int. 24. Then the foregoing is all the experience you have had with the Mississippi River, and its shore lines, and its various changes and eccentricities?

A. No sir.

Cross Int. 25. Well, when did you have any other?

A. After my employment with the Government in the fall of '97 and spring of '98 below Greenville, as above stated, I resigned my position with the Government in March '98; went into business for myself—levee work, construction work with disasterous results, owing to low prices and extremely bad weather in '98. In the fall of '98 —November 3rd I believe—I relinquished my contracting business and entered the employ of the Mississippi Levee Board; engaged for the first period of my employment on what is known as the Huntington Short Line surveys, (surveys of Huntington point) on which surveys I spent, it would be hard to say how much time, over a period of several years. I believe the litigation was settled in 1901, was it not, Mr. Scott?

Cross Int. 26. What was the Huntington Short Line?

A. It was the surveys of the lines thrown out, and the shore lines changed from Mound Landing down to the county line and across what is known as Huntington Point, and the levee there was given the name of the "Huntington Short Line" being a short cut across Huntington point.

Cross Int. 27. Where did that commence and how far did it extend down the river and how far below Island 76?

A. Commenced about 15 miles below Island 76, and extended
412 generally in a very nearly north and south direction about 4½ miles to the old levee near what is known as the old Offutt Quarters.

Cross Int. 28. Well then, taking all of the foregoing, is that all of your experience in watching the surveys and particularly noting the changes of the Mississippi River.

A. No sir. The larger part of my time since employed by the Board in November of '98 to the present time has been devoted to rights of way work, and to surveys relating to levee location and shore lines on the Mississippi River. During that period I surveyed the shore lines at caving bends especially, and in those where the banks are stable over the greater part of the distance from the Bolivar-Coahoma County line to Brunswick, Mississippi. Some of those surveys extend along the upper portion of Stromville front, opposite which lies Island 76.

Cross Int. 29. Well, from the foregoing I understand you to say that you thoroughly understand all the eccentricities of the Mississippi River, in its cut offs and cavings, and the reason for them? Am I correct?

A. If I did, I would not be drawing a little $125.00 a month. No man understands that. Each caving bend is a problem in itself.

Cross Int. 30. Going back to 35 or 40 years ago, it is a little difficult for you, even with your large and varied experience, to state positively how a thing was, and how it was done, or how the river run, why it run, and why it could not get through a given space?

A. I must thank the gentleman for the compliment paid me as to my large and varied experience; but I must say that there is much proof that may be had from maps showing the location of river points, from the methods used by surveyors in making their sur-

veys, and from the topography of the land as shown by those maps, of the channel of the river. I have only attempted to show as best I could what those must have been.

Cross Int. 31. You are not certain that those conditions did exist and you arrived at the absolutely correct conclusion?

A. I am satisfied myself that I do.

413 Cross Int. 32. Is it not a fact that the Mississippi River is conceded to be rather an eccentric stream?

A. Yes sir, it is rather erratic.

Cross Int. 33. Is it not a little like George D. Prentice described matters and things: When God Almighty created the world and the waters and everything that was in them, and the planets and the sun and the moon and the stars, that he fixed limits to them; when he created the Mississippi River, he turned it loose and told it to rip and it has been ripping ever since?

A. George D, was indulging in metaphor, and he had probably visited Napoleon, Arkansas.

Cross Int. 34. Napoleon was wiped out once very suddenly, was it not?

A. Very suddenly, yes sir.

Cross Int. 35. Napoleon ain't very far above Island 76, is it?

A. No sir, it is quite a piece.

Cross Int. 36. How far is it?

A. It would be hard to say just how far. It is just below the mouth of the Arkansas River.

Cross Int. 37. It is not over 10 or 12 miles, is it?

A. I should judge that would be close to it.

Cross Int. 38. You were not there in 1821, '31, '25; nor there in 1880 and 1885, were you?

A. No sir.

Cross Int. 39. On Exhibit C to your deposition about which you have testified; now all you have testified in regard to Exhibit C being the map filed in 1846, as appears, all you have testified to is from the appearance of that map and your deductions from it?

A. Yes sir, I was not there.

Cross Int. 40. You never verified any of those surveys or triangulations?

A. No sir.

Cross Int. 41. You spoke of a caving bank on the west shore, or Arkansas shore, which, in your opinion, indicated that the channel ran at a certain place.

414 A. I think you are mistaken as to my saying that it was the Arkansas shore. I think it was the west shore of the island in my testimony in reference to Exhibit C.

Cross Int. 42. Then as to the west shore of the island?

A. Yes sir, it must have been a caving bank.

Cross Int. 43. Except from the lines you see on the map, you have no information in regard to that whatever, have you?

A. No sir.

Cross Int. 44. The field notes are given on this map, are they not?

A. Yes sir, I believe so.

Cross Int. 45. Now in fact, where it is marked on them—the Mississippi River, you gave the distance further, while that shows that that distance—50 chains, was actually surveyed, don't it?

A. Yes sir.

Cross Int. 46. Then came to the point where they could not cross?

A. They surveyed entire around.

Cross Int. 47. They surveyed entire around entering out to the island?

A. No sir, they surveyed a base line on the upper——

Cross Int. 48. I say they surveyed a base line to the upper end then they surveyed a line east 47.29 chains to the island.

A. Not by actual measurement.

Cross Int. 49. Well, they managed to get there by triangulation or otherwise?

A. Yes sir.

Cross Int. 50. The surveyor meant plainly to show that Island 76 is a part of Arkansas, did he not, as appears from that map?

A. Yes sir, that's what it appears from that map.

Cross Int. 51. Now from the same map, what is the distance from minor *"a"* on the island to the Mississippi shore?

A. That Mississippi shore, there is nothing on the map to show that it is along there, even by estimate of distance, eye
415 measurement—about 38 chains according to this map from the island bank opposite *"a"* minor to the Mississippi shore line as shown on this map.

Cross Int. 52. That is how many feet?

A. 2508 feet.

Cross Int. 53 Nearly a half a mile, is it not?

A. Scant half mile; short two chains of a full half mile.

Cross Int. 54. What is the distance from the foot of the island, as appears from the map, to the Mississippi shore?

A. Forty chains—one half mile.

Cross Int. 55. I notice from that map that the Mississippi River on the east of the island; there is no measurement at all, is there?

A. Nothing to indicate, that the Mississippi bank is along there, by actual measurement, or by triangulation and calculation of the distance.

Cross Int. 56. Then that, your idea is, was a mere eye measurement or a guess?

A. Yes sir.

Cross Int. 57. At the date of this map the main channel might have been on the Mississippi side where there is no measurement at all?

A. No sir.

Cross Int. 58. Is not one half mile broad enough for the main channel of the Mississippi River?

A. The man that made that map shows it on the west side?

Cross Int. 59. I don't see where he shows it on the west side, do you?

A. He shows the river there.

Cross Int. 60. River on the other side is there not?

A. Yes sir.

Cross Int. 61. Well at no consideraable date, is it not possible that that was the main channel, and might have gone down across that chute?

A. I will have to answer you, and wish also to give my
416 reasons—No sir, taking the river as shown by the map it is not.

Cross Int. 62. Now you spoke of a caving bank on the island?

A. Yes sir.

Cross Int. 63. Have you got anything to indicate that except simply the land marks?

A. Nothing except the map before you.

Cross Int. 64. Running a straight line east and west across from the field at the center of section 2 to about the center of section 3 on the main land, what is the distance between that and the Arkansas shore?

A. From the island bank in the field at the center of section 2 township 12 south range 1 east, measured due west across the channel of the Mississippi River to the main land bank of the front of section 3, township 12, south, range 1 east—the measurement taken by scale from the map before me is 97 chains.

Cross Int. 65. There is nothing there at that point to show any actual measurement across there, is there?

A. No sir.

Cross Int. 66. All your testimony in regard to this map then, is based upon the measurements that you have made here tonight, using the scale as laid down on the map, is that so?

A. My testimony with regard to the measurements is based upon scale measurement from shore lines actually run, and connected by locating a base line, and then measured by triangulation and calculation, on the front of section 35, township 11, range 1 east; this line having for its initial point the northeast corner of section 34, as described in my testimony foregoing.

Cross Int. 67. You have not answered my question.

A. I have tried to.

Cross Int. 68. I wish to convey this idea; that while the surveyor made no actual measurements across the channel at that point, while for all practical purposes it was measured in as much as the shore line on each side of the channel of the river at the point which you designated in your answer, was actually located by measurement and connected by a line further up the stream?

417 A. If you take the measurement you will see——

Cross Int. 69. My question is, which you have not answered yet, is whether or not your whole testimony in regard to this map is not taken from the scale laid down on the map, and your measurement from point to point as appears on the map?

A. All my measurements of course are, except those referring to the random line on the bar, and the triangulation work across the river opposite the upper end of the island, west of the island, all the

evidence that I have given with the exception of those measurements have been taken of course, you see, by scale.

Cross Int. 70. And it all appears on the map?

A. It all appears on the map.

Cross Int. 71. That is what I have been trying to get at. Do you know anything about the caving of the shore line on the Mississippi side from 1846 or '21 down to the present time?

A. There has been no caving since '80 or '81 that I have any correct evidence of.

Cross Int. 72. When did you first see that island?

A. I first saw the island—I think it was in 1899.

Cross Int. 73. In your explanation heretofore given in your examination in chief of exhibit C to E. H. Nall's deposition, it being Exhibit to your deposition, state whether or not all your testimony in regard to that map and measurements you made from the map itself, the whole data appears on the map itself is not that so?

A. Yes sir.

Cross Int. 74. If I understood you correctly, you stated as a reason why the Mississippi River could not have gone east of the island, as appears from that map, that the water of the Mississippi River could not have gone through so narrow channel as indicated by that map. In other words, that the point of inflow of the river to that channel being greater than at one point down the channel; that it would cause shoaling or a bar at the head of the channel, and the water could not have passed through so small a space as 8 chains; was that correct?

A. The statement is not exactly I believe what I stated. I stated that the greater width at the upper end, would let more water
418 in than could pass out at the narrow throat; that the current would be slackened at the upper end, therefore the shoaling would take place.

Cross Int. 75. Well, now, where the channel is narrow, in the Mississippi River particularly, is it not a fact that it scours out in the bottom and makes it deeper at the narrow place?

A. Yes sir.

Cross Int. 76. Then that volume of water coming in at the head of the channel and passing through the narrow place would certainly have scoured out the bottom at that shallow place, and made it much deeper, would it not?

A. Yes sir, in sufficient time.

Cross Int. 77. Well, how do you know how much the Mississippi River would scour in the channel, when it is necessary?

A. Well, I have sounded at low water over 40 miles of this river, taking soundings every few hundred feet across the river, and the greatest depth that I can now recollect was in the neighborhood of 130 or 140 feet. That depth must have been exceeded at that point to pass the water that would enter at the upper end of the chute at the head of the island. That depth there was the normal depth of the water, and a width of 29 chains as shown on the plat.

Cross Int. 78. Did you ever make a sounding at that particular place when the channel was at that particular width of 8 chains to see the depth of it?

A. It is not very far from that now, and I have shot ducks in the mud there.

Cross Int. 79. How long since?

A. That was last November—a year ago last November.

Cross Int. 80. My question was, however, whether in 1846 you actually, or not, or had you actually made a sounding to get the depth of that channel?

A. I did not in 1846, but there was a mud bar there in 1901.

Cross Int. 81. You know nothing of the making or get up of this particular map Exhibits C and B, except what appears on the face of it?

419 A. That is all.

Cross Int. 82. I will ask you to look at this map again and see if there is anything on it to indicate that that 8 chains at the narrowest point on the eastern side of the island has ever been actually measured, or was actually measured by the surveyor at the time the map was made.

A. There is no measurement across the bar at that point. There is a measurement shown at the upper end in the actual survey on the Mississippi bank run on the island bank and Mississippi bank.

Cross Int. 83. How do you know that survey was actually made except that shown on the map?

A. It says so.

Cross Int. 84. That is all you know about it?

A. That is all—what the map shows.

Cross Int. 85. You do not know as a matter of fact by actual survey whether these distances are correct or incorrect, do you?

A. No sir.

Cross Int. 86. I call your attention to a copy of a map purporting to have been made by Benjamin Griffin, Deputy Surveyor in January and February, 1830, township 21, range 8 Choctaw District, duly certified by Binger Hermann Commissioner of the General Land Office and Ex-Officio Surveyor General of Mississippi. State whether or not that map does not on its face represent the Mississippi River as east of Island 76.

A. Yes sir.

Cross Int. 87. I will ask you whether or not it does not appear on that map a table of contents giving the field notes of the surveyor of the land adjacent to that island on the Mississippi side running up to the Mississippi River.

A. It gives the contents of the township in acres up to the point you mention—up to the Mississippi River bank, as shown on the plat.

Cross Int. 88. I will ask you to make that plat Exhibit D to your deposition.

420 A. I do at your request.

Cross Int. 89. You have testified to a plat made Exhibit A to your deposition of fractional townships 11 and 12 south of range 1 east of the 5th Principal Meridian, signed by Wm. McKee, Surveyor of Public Lands Illinois, Mississippi and Arkansas, and seems to have been made by Dan Miller, Deputy Surveyor. I will ask you whether or not all you have testified to in regard to that map or plat

was not made and stated from the face of the map itself as it appears.

A. Yes sir.

Cross Int. 90. And all you have testified to in regard to the caving banks and course of the river was drawn from the appearance of this map itself?

A. Yes sir.

Cross Int. 91. I will ask you whether or not on that map or plat does not appear the field notes of the surveyor of the same.

A. No sir, it is just areas of the sections.

Cross Int. 92. That map bears date of January 22nd, 1827, I believe; is that correct?

A. That was the date placed in the surveyor's land office at St. Louis, but the date of the survey is Feb'y 17, 1827, and reads as follows: "Subdivisions and entries of fractional townships 11 and 12 south, range 1 east on the right bank of the Mississippi River and south boundary of township 11 south, range 1 east with surveys at a variation of 7 degrees east in February 1827, by Daniel Miller, Deputy Surveyor under his contract of the 7th day of December, 1826."

Cross Int. 93. You have stated that from the map opposite letter "A" at a point up the river various changes indicated by the bank lines, I will ask you the distance from A to a point Z on the Mississippi shore line opposite the head of Island 76, as appears on said map by the scale laid down thereon?

A. 5¾ miles in a direct line to the point from A to the mark Z on the map.

Cross Int. 94. You have stated from a point on the north-
421 east corner of section 20 on the Arkansas shore that the current deflected to the eastern side of the Mississippi shore, creating a caving bank down as far as letter X as indicated on the map. Now I will ask you whether or not just at letter X there is not another deflection running down to below Z, as marked by you, showing a caving bank there on the Mississippi side?

A. I stated that at or about the northeast corner of section 20, township 11, range 1 east the current was deflected from the right or Arkansas bank and passed over to the Mississippi bank, there creating a caving bank opposite the point D on the Arkansas bank, the Mississippi bank caving as far down as X, the caving following the western face of the bank of the island down. As to the second curve below X down to the letter known as Z, I would say that that could not be a caving bank, caused by the current above for the reason that the curve of the bank above would deflect the current out from the bank at or about X, causing it to go west of the island instead of down past Z.

Cross Int. 95. I will ask you whether or not it does not appear from that, at the letter X there is a little point, perhaps a mud point that stood out and held back the caving at that particular point, and from that point it began immediately, according to the line on the map, to deflect east again still caving until it reached a point below the head of Island 76, and that caving between X and

Z and below Z pushed itself back east around that point nearly to an equal distance of the caving above X.

A. There is certainly a mud point at X, all such points on the Mississippi bank are mud, or mud and gravel—that may have been gravel there. As to same proving what perhaps might have been the condition of the eastern channel, I will say that all the conditions of the bank, as represented by the plat known as Exhibit A to my deposition, indicate that instead of that being the bank line of the river proper at that time, running the Mississippi bank east of the channel and below X down past the point known as Z east of the island, that all the conditions as shown by the plat indicate that the channel was undoubtedly west instead of east of the island.

422 There is nothing in my experience on the river showing that the Mississippi River deviated from natural law, and instead of being deflected from a shore line by a salient point, hugs the shore below that point.

(Foregoing answer excepted to by counsel for complainant as not responsive, and the question repeated.)

Cross Int. 96. Is it not a fact that the shore line on the Mississippi side, as shown by this plat, that is, that from X it began caving or pushed the bank east down to and below the head of the island.

A. The chute bank shows the curve described in the proceeding question, but not the river bank.

Cross Int. 97. What I mean to ask you is whether or not the shore line on the Mississippi side from the point X, don't show that it has caved or receded back from that point from X down to Z and below it? At some time before Island 76 existed?

A. Probably so.

Cross Int. 98. Don't it so show particularly on that map?

A. It shows a concave line there which I called the chute bank.

Cross Int. 99. The line at Z you represented to indicate the shore line on the Mississippi side of the water, did you not?

A. I represented it to be the chute bank, which is also a shore line.

Cross Int. 100. Does it not indicate the water line on the Mississippi side?

A. It indicates a high water line on the Mississippi side, yes sir,

Cross Int. 101. Why do you say continually a high water line?

A. Because I contend that at low water between the head of the island and the point on the main land of the Mississippi shore marked Z, that a bar must have existed at low water.

Cross Int. 102. That is a mere supposition of yours, is it not?

A. That is an inference drawn from the shore lines.

(Complainant excepts to all parts of the foregoing answer, because — does not state a physical fact that existed.)

423 Redirect examination.

By Mr. SCOTT:

Int. 1. Mr. Andrews, I call your attention to the map of Feby. 18th, 1830, of township 21, range 8 west, Choctaw District, filed as exhibit D to your deposition. Please state whether or not island 76 is designated on that map.

A. Island 76 is shown on that map.

Int. 2. How does it appear that Island 76 is drawn in? I mean by this, does it appear that it was drawn by actual survey, or merely sketched in?

A. It appears to have been sketched in.

Int. 3. Is there anything on that map to indicate that any traverse of the Mississippi River was taken at that point, that is, between the main land of township 21 and Island 76?

A. There was a traverse of the bank on the main land taken but nothing to indicate that the banks on the island were traversed.

Int. 4. Is there anything to indicate on that map that the distance in any way across the Mississippi River was taken?

A. No sir.

Int. 5. Is there anything to indicate on that map that the distance across the chute between the main land of Mississippi to the island was taken?

A. No sir.

Int. 6. I hand you certified copies of the field notes of township 21, range 8 west filed as exhibit B to Mr. E. H. Nall's deposition, and being marked "17-F" and 8-B. Please examine same and state whether or not that map conforms to the field notes of township 21, range 8 west.

A. The map conforms to the field notes as shown in Exhibit B to Mr. Nall's deposition and marked 17-F, that is, the map marked Exhibit D to my deposition.

Int. 7. The 17-F however constitutes what?

A. It constitutes the fractions of township 21 north range 8 west on the main land.

Int. 8. Does it, or not, constitute the entire field notes of
424 township 21, range 8 west?

A. No sir.

Int. 9. Then state whether or not the map filed as Exhibit D to your deposition conforms with the field notes of township 21, range 8 west. In case you shall state that it does not conform to the field notes of said township 21, range 8 west, state why not and how it does not conform to the said field notes.

A. It does not conform to the entire lot of field notes of township 21 north, range 8 west in this particular: That it omits all the traverse of Island 76, as shown in Exhibit of Mr. Nall's deposition. No. 8-B; Those field notes, which I have carefully platted, show the traverse of Island 76, showing its connection with the Mississippi surveys. The surveyor made his survey of township 21, range 8 west in January and February of 1830, as shown by Exhibit D to my deposition. He made the survey of township 22 north range 8 west

in October of 1830, or well toward the end of the year. The same surveyor, Daniel Griffin, who surveyed township 21, range 8 west and 22 north range 8 west, made a traverse of Island 76. That traverse is connected at the northern extremity of the island with the bank line of the main land, as shown on Mr. Nall's plat marked Exhibit A to my deposition.

(Complainant excepts to the foregoing answer as incompetent.)

Int. 10. The survey of the field notes marked 17-F were made in January and February of 1830, were they not?

A. Yes sir.

Int. 11. And when were the field notes in 8-B made?

A. They were made in October of 1830.

Int. 12. 8-B is headed: "Field notes of township 22, range 8 west of the Choctaw District of the State of Mississippi," is it not?

A. Yes sir.

Int. 13. How is township 22, range 8 west situate with reference to township 21, range 8 west?

A. Directly north.

425 Int. 14. In obtaining the starting point for Island 76 in the Mississippi River, state how the surveyor connected the island with the main shore, and with which township and range the connection was made.

A. On completion, after he had made the surveys on the mainland, he crossed to the island, and made a traverse of the island, commencing at its upper extremity passing clear around the island, then after he had returned to his starting point at the upper extremity of the island, he passed across the bar, running a line across the bar at the upper end of the chute, and connected his survey by bearing and distance, with the traverse of the mainland in township 22, range 8 west.

Int. 15. Now, Mr. Andrews, state how you believe, from all of the facts before you, consisting of Exhibit B to Mr. Nall's deposition and Exhibit C to your own deposition, and Exhibit D to your own deposition, how the exhibit B happened to be only a partial map of township 21, range 8 west, and Exhibit C the entire map of township 21, range 8 west, and the two maps of the same township happened not to be the same.

A. The first survey was made in January and February, 1830. That is the survey on the main land as shown by Exhibit D to my deposition. There was no attempt at that time to traverse the banks of the island. The survey of township 22, north, range 8 west was made in October, as shown by the notes, of the same year—1830. From the fact that the first survey was made in January and February when the channel of the river was usually full of water, as it is at the present time, I have no doubt that the surveyor deemed the island inaccessible at the time and postponed his work on that portion of the territory until a more favorable season should arrive. When he made the survey in the fall of October, 1830, it was our customary dry season and he had no trouble in crossing what I hold must have been the bar across the chute at the head of the island. His

notes, however, were kept in connection with the survey notes which he had just made for township 22, range 8 west. He had
426 already sent his township plat, as shown in Exhibit D to my deposition, into the office, forgetting that he had failed to make the survey of Island 76. When he came to plot the field notes to make the map of township 22, north, range 8 west, he discovered that he could not sectionize this island as a portion of township 22 north, range 8 west. The field notes show the attempt to do so by those particular sections 6 and 7 of township 22, range 8 west, and he changed that, as shown by the field notes, to sections 36 and 37 of township 21, north, range 8 west. The first plat had already gone in, and correction was made on the plat in the office at Jackson, or wherever he sent his notes. This map to Mr. Nall's deposition is undoubtedly a correct representation of the home office map.

(Complainant excepts to the foregoing answer as incompetent.)

Int. 16. This map marked exhibit to your deposition and C to Mr. Nall's deposition, is a true map of the entire field notes of township 21, range 8 west?

A. I have just platted the field notes of that portion of the township adjacent to the river, and I find that the map as made by Mr. Nall is a correct representation of the same, and is a full representation.

Int. 17. Now, Mr. Andrews, Col. Myers in his cross examination, asked you if there was any measurement shown on Exhibit to your deposition and Exhibit C to Mr. Nall's deposition, of the distance across the chute at the northwest corner of section 4, township 21, range 8 west, where you stated the distance to be 8 chains in your direct examination, to which you answered I believe that there was no direct measurement shown across the chute. State whether or not, however, from locating the scale on the map, you can get the distance across the chute, and whether same is as correct as though measured by chain; and if so how? And why?

A. To all intents and purposes there has been made by the surveyor, the measurement across the chute. He has made surveys on both the main-land and the island banks connected above by means of the line run across the head of the chute. It follows that
427 where the traverse of the bank on the main land, and the traverse of the island bank are connected by course and distance and correctly platted, scale measurements are correct; scale measurements are correct within the limit of platting on the scale here given.

Int. 18. I note from Exhibit D to your deposition that the township of Island 76 is totally different from the township of Island 76 in Exhibit B to your deposition. State how that difference happened to exist, and which is the correct township of the island taken from the field notes thereon.

A. In Exhibit D to my deposition, the island is shown simply as it was sketched in by the surveyor at the time he was making the traverse of the main land bank. Township 21 north, range 8 west, the plat shows under different dimensions to the island in that case.

However, in the plat marked Exhibit to my deposition, the island is shown as it existed; the outline of the island is shown by actual measurement taken on the ground. I want to refer to the chute in this township. It is something that has not been asked me, but it is a point very material. It is this: The fact that the surveyor has marked the Mississippi River as passing east of the island between that and the main land on the plat marked Exhibit D to my deposition. At that time I hold that the channel must have had a large volume of water passing through it. Even an ordinary dry chute would have shown a large body of water passing down it,—the river being at probably the same stage it is now. In that case it would have been practically impossible to determine just the depth and condition of the channel or the chute, and I take it that the surveyor just intended to represent the fact that water was passing down the chute, not that it was the channel of the river.

(Foregoing question excepted to by complainant as incompetent for reasons to be assigned at the hearing.)

Int. 19. Mr. Andrews, I refer you to the map marked Exhibit C to your deposition, and call your attention to the question of Col. Myers relative thereto, as to the distance across the Mississippi River from the field on the island at the center of section 2 township 12, range 1 east, across to section 3, township 12, south, range 1 east, as to whether or not there is a measurement across said river. Please state whether or not from scaling the distance across, as per the map, you can get the correct distance, and if so why and how?

428

A. Certainly you can. You have two points on the bank lines, one on the bank line on the Arkansas main land and one on Island 76. These bank lines were fixed by actual traverse of each. Then the traverses are connected, as you see, by measurements and triangulation across the river opposite the upper portion of Island 76. It follows that on a map, where those field notes have been correctly plotted scale measurements are correct within the limits of plotting to that scale. I mean by that that the amount of error in a scale measurement would be too small to be of any relative importance.

Int. 20. Now examine that map with reference to the entire outline indicating the Mississippi shore line, and state whether or not there is shown on the same an attempt to arrive at the correct distance across the river at any point on the map except the distance across the river from the main land of Arkansas to Island 76.

A. The only evidence of actual measurement from the main land of Arkansas to any other bank is that shown on the plat connecting the main land of Arkansas with Island 76. If the surveyor had made any other measurements, he would have shown them. He has sworn that that plat is an actual representation of the land as shown by the field notes. Therefore, if he had taken any measurements across to the Mississippi main land, he would have shown those measurements on this plat. In absence of such measurements shown on the plat, the conclusion is that he took no such measurements,

but only took the Mississippi bank down by eye measurement and sketched it in.

(Foregoing answer excepted to by complainant as incompetent for reasons to be assigned at the hearing.)

Int. 21. In other words, the line opposite the main land in Arkansas curving around is scaled and signifies the line indicating
429 the river between the two lines.

A. Yes, it is an approximate line and indicated the Mississippi bank of the river.

Int. 22. Put in from the Mississippi?

A. An eye measurement probably sketched in his field book while he was in the field. It is customary with surveyors to make a great many surveys that way.

Int. 23. Referring to the plat marked Exhibit A to your deposition, Mr. Andrews, I call your attention to the question asked by Col. Myers relative to the indentation from the point just below the point X to the point marked Z on said map, to which question you replied that indentation there did not indicate a caving bank; nor indicated the channel bank of the river, but indicated the bank of the chute. Please state what you meant by so stating, and especially with reference to the indentation not indicating a then caving bank with reference to the point Z indicating the chute bank.

A. That chute bank represents an old river bank, a bank that dates back for its formation, back beyond any records that we have, or knowledge of man in this country. It is not a caving bank for this reason. That it is protected from the current of the river by the point of land on the Mississippi bank reaching out in the channel of the river at point X, and on account of the curvature of the Mississippi bank above this point X, the current would be deflected from the bank below which I designated as a chute bank.

Int. 24. Taking then the map as correct as drawn at the date thereof, it would be a physical impossibility for the current to have struck in below X and at the point Z, would it not?

(The foregoing question excepted to as incompetent for reasons to be assigned at the hearing.)

A. Yes sir.

Int. 25. State whether or not there is another conclusive proof from the map that the point Z was not a caving bank with reference to the river below the island and the condition of the banks there.

A. The surveyor in making this plat—it is surveyed for the
430 State of Arkansas—has undoubtedly attempted to represent the Mississippi bank with a degree of accuracy unusual in such surveys. You will observe that he has taken at different points —bearings to locate the Mississippi bank, particularly so above and below the island on the Mississippi bank and on the upper and lower extremities of the island, and he has shown on his plat the curvature of the Mississippi River with the curve in the Mississippi bank above, opposite the point D on the Arkansas bank, down past the point X, and the curvature of the Mississippi bank coincides with the curvature

on the western face of the island, and very well with the curvature below. He also shows from the map that he takes that to be the Mississippi bank in that he takes his location of points on the Mississippi bank down the west face of the island instead of down the Mississippi main land bank.

Int. 26. I will ask you a hypothetical question: Suppose the bank at X was a caving bank, and the current or channel passed down the east side of the island, at the date of this map, what would have been the condition of the Arkansas bank relative to caving below Island 76, and what would have been the condition of the Mississippi bank below the island.

A. The Mississippi bank below the point marked Y would have been convex instead of concave, and the corresponding Arkansas bank would have been concave instead of convex.

Int. 27. So the map shows conclusively by reason of the concavity of the Mississippi bank below the point Y, and the convexity of the Arkansas bank, opposite the point Y, that the current could not have passed down the east side of Island 76?

(Foregoing question excepted to by complainant as incompetent, for reasons to be assigned at the hearing.)

A. That would be hard to say; from the map probably in the early years of the last century, or latter part of the preceding century would be the date of the formation of the bank, but it would be hard to say from that. My testimony with regard to the age of the bend is based on this series of maps, and on the maps I spoke of in my testimony of the 1893 report of the Mississippi River Commis-
431 sion, those maps dating back to 1765, all showing no change from the condition of affairs as shown by this map.

Int. 30. You then are familiar historically, with the condition of the river at that time, independent of the maps introduced here?

A. Yes sir. I have been familiar with it for the past 6 or 7 years.

Int. 31. Part of your business, is it not?

A. It is. Further I take an interest in, a very natural interest in, following up the changes in the banks and channel of the river.

Re-cross examination by Col. D. E. Myers:

Reserving the exceptions, re-crossed by the complainant.

Cross Int. 1. All your testimony this morning on re-direct examination, is based upon the maps exhibited to your deposition and certain field notes entirely, is it not? And your conclusions and deductions therefrom?

A. Yes sir, and the maps mentioned in the 1893 report of the Mississippi River Commission. The maps known as Collet's, Putnam's and Lieutenant Ross's.

Cross Int. 2. Those maps and books are not exhibited with your deposition, are they?

A. No sir. I would like to make them a part of my deposition.

Cross Int. 3. Why are you so particularly desirous of making them a part of your deposition?

A. Well, I have referred to them as substantiating the statements

I have made with reference to this bend, and I would particularly desire that they be introduced for that purpose.

Cross Int. 4. What makes you so particularly desirous to have those introduced to substantiate what you say on this examination?

A. In order that my statements may be borne out. No
432 man likes to state a reason at random, and let a lawyer get up before a court where he is not represented and tear him all to pieces.

Cross Int. 5. You have taken a considerable interest in this island, have you not?

A. I especially take a great deal of interest in all the river and noting its changes. It is my calling in life to live and work along the river.

Cross Int. 6. Now in making your calculations from the maps and field notes that you have testified about in re-direct examination this morning, how long were you engaged in those calculations from what hours and when?

A. I don't know the exact hours I spent, probably an hour and a half in platting out the notes.

Cross Int. 7. Probably an hour and a half in platting and making your calculations?

A. Yes sir; there were no calculations to make, just simply a plain platting of the field notes.

Cross Int. 8. In platting the field notes, you had the original map before you that you have exhibited?

A. Yes sir.

Cross Int. 9. In those field notes you spoke of certain ones as having been prepared and filed in the office of the Secretary of State, or the Auditor's office of Mississippi, by the surveyor himself. Now do you know he made them there, or where he made them, or is not all that mere speculation on your part?

A. Of course, I do not know in what particular locality he made the map, but they were bound to have been filed in the surveyor's office.

Cross Int. 10. Well it is entirely calculation, is it not, probably theory?

A. No sir, it is a requirement of law.

Cross Int. 11. Then your position is that all laws are actually complied with?

A. They are in that particular.

Cross Int. 12. You know that personally to be so in 1830?
433 A. No sir, I was not there, but I know the records show it.

Cross Int. 13. Then down to the fact, it is merely a speculation of yours.

A. There is the sworn statement of both parties concerned on that map.

Cross Int. 14. Then it is a mere speculation that it was done?

A. It is a conclusion from the statement on the face of the maps.

Cross Int. 15. You also gave as a reason why Island 76 was not

traversed at the time the plat—Exhibit D to your deposition, because of the height of the Mississippi River at that time. Now do you know what the stage of the water was in the Mississippi River in January and February of 1830?

A. It is a deduction drawn from the facts in the case as presented by the records.

Cross Int. 16. And merely a speculation on your part?

A. A knowledge of the stage of the river at that time of the year.

Cross Int. 17. Is it not a fact that with many years, the Mississippi River is rather low in January and February?

A. No sir. We generally take our low water discharges in December.

Cross Int. 18. Is it not a fact that it has been known to be low in January and February?

A. I expect so.

Cross Int. 19. Occasionally, sometimes, that all the upper end of the river is frozen up at that season of the year?

A. I expect it is.

Cross Int. 20. And you don't know how it was in January and February, 1830?

A. I don't know; I have no personal knowledge of any low water at that season of the year.

Cross Int. 21. But you don't know how it was in 1830?

A. Of course not.

Cross Int. 22. Isn't it a fact that all you have stated about
434 that is merely a supposition?

A. Is a deduction from the facts presented from the plat and field notes.

Cross Int. 23. And all your deductions are drawn from the field notes and those plats that you have exhibited?

A. Yes sir.

Cross Int. 24. Not from personal knowledge whatever?

A. Not from personal knowledge.

Cross Int. 25. Not from actual survey?

A. Not from actual survey.

Redirect by Mr. A. Y. Scott:

Int. 1. When you referred to a part of your deposition being based upon the maps of the Report of the Mississippi River Commission in 1893, state just what you meant thereby.

A. I referred of course to the period of time during which the channel had existed in approximately the same situation that it is now. That it was shown in these old maps as being approximately where it is shown in the plats exhibited here from the land surveys, before and during a great number of years.

Int. 2. You mean to state that the condition of the channel shown in the maps, etc., filed with your deposition, is practically the same as the condition shown in the ancient maps of the Mississippi River Commission reports?

A. That is what I meant.

(Foregoing question and answer excepted to by counsel for the complainant- as incompetent for reasons to be assigned at the hearing.)

Int. 3. Your testimony as to the channel of the Mississippi River at the dates of those maps exhibited to your deposition is based upon what?

A. Why, it is based upon the maps themselves and the field notes which I have exhibited and platted.

Int. 4. And has no reference whatever to do with the
435 ancient maps of the report of the Mississippi River Commission?

A. No sir, I only spoke of them as corroborative of the evidence introduced by those plats exhibited to my deposition.

Int. 5. I will ask you, Mr. Andrews, to file as Exhibit F to your deposition the map marking the course of the Mississippi River from the Balaise to Fort Chartres, being a map of Lieutenant Ross, 34 Regiment, and bearing date of 1765.

A. I do so.

(Foregoing question and answer excepted to as incompetent for reasons to be assigned at the hearing.)

Int. 6. I will ask you to file as exhibit G to your deposition the map of the Mississippi River from the Balaise to Fort Chartres, being a map by Capt. Phillip Putman bearing date of 1770.

A. I do.

(The foregoing question excepted to as incompetent.)

Int. 7. I will ask you to file as exhibit H to your deposition a map of the course of the Mississippi River from the Missouri to the middle of the Illinois and the mouth of the river.

A. I do.

Int. 8. State whether or not all of these maps are attached to the report of the Mississippi River Commission of 1893, and are found between pages 3708 and 3709.

A. They are attached to the 1893 report, and are found between the pages mentioned.

Witness further re-crossed by counsel for complainant-, Col. D. E. MYERS, as follows:

Cross Int. 1. At what date did you commence your investigation and particular interest as to Island 76? And the sundry maps in relation thereto?

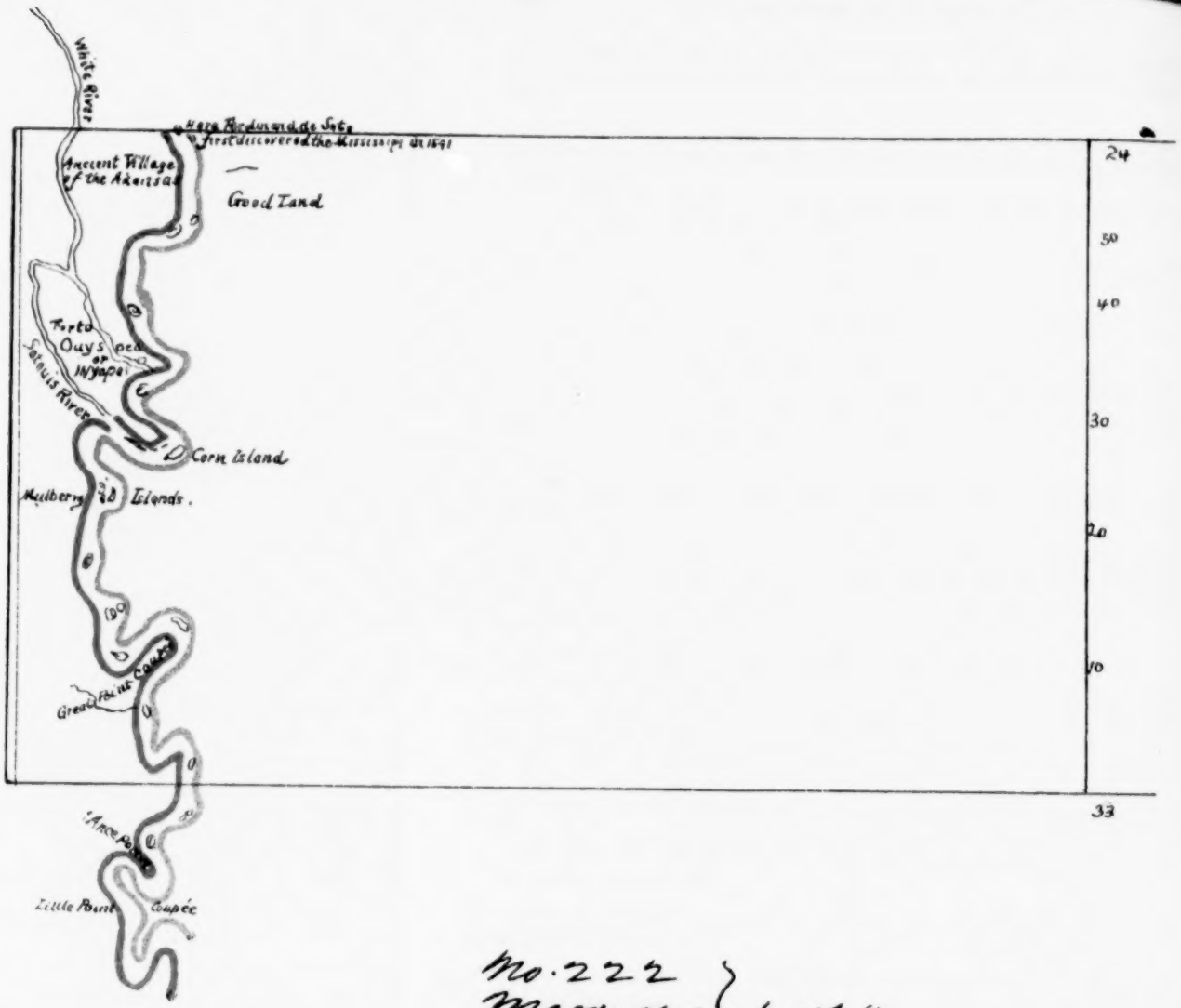
A. I commenced for no particular island or locality. It was about a year ago, I judge, nearly a year ago for that particular island.

Cross Int. 2. Where did you become interested about a year ago as to that particular island?

436 A. I was interviewed at the office in Greenville by Mr. McGuire.

Cross Int. 3. The defendant in this case?

A. Yes he was the defendant in this case.



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} p. 438

Cross Int. 4. All your statements about Island 76, and theories that you have predicated on these maps resulted from that interview.

A. No sir.

Cross Int. 5. Had you commenced your investigations of Island 76 at that date, or after that as special?

A. I made no special investigation of Island 76, as I stated before. I was interested originally by that report, and have during a course of years, never lost a chance to study any old map and make investigations with reference to the old river banks, and the channels and the islands. So far as Island 76 is concerned I must say that I have made no special study, connected with this suit, until called here yesterday evening and this morning.

And further deponent saith not at this sitting.

(Signed) WM. McC. ANDREWS.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

For Exhibit A, to this deposition see folio 280 this record.
For Exhibit B, to this deposition *vide* folio 267 this record.
For Exhibit C, to this deposition see folio 281 this record.
For Exhibit D, to this deposition see folio 288 this record.

437 The defendants at the final hearing introduced as evidence the following portion of a map of the course of the Mississippi River from Balise to Fort Chartres taken on the expedition of the Illinois in 1765 by Lieutenant Ross of the 34th Regiment, improved from the survey by the French, which map is attached to the report of the River Commission of 1893.

(Here follows map marked page 438.)

439 To the introduction of which map the complainants at the time excepted.

440 C. H. WEST, a witness on behalf of the defendants, being duly sworn, deposes in response to the interrogatories and cross interrogatories propounded him as follows, to-wit:

Int. 1. State your name, age, residence and occupation.

A. C. H. West, Greenville, Mississippi, civil engineer, 44 years of age.

Int. 2. If you shall answer to the foregoing interrogatory that you are a civil engineer, state how long you have been engaged in your profession.

A. From December, 1883, unto this date.

Int. 3. What is your present employment, and how long have you occupied that position?

A. Chief Engineer of the Mississippi Levee District, from August, 1898, until this date.

Int. 4. State whether or not you have ever been engaged in river and levee work, and, if so, how long, and, in a general way, state your familiarity with regard to same.

A. Yes, I have been so engaged in such work during the greater portion of the time for the past twenty years. I consider that I am familiar with that character of work as it constitutes my profession which I have been for a long time engaged in and am now so engaged.

Int. 5. State whether or not you are acquainted with the Mississippi River and whether or not you have a knowledge of the width of its channel from Cairo to the Gulf, and state how said knowledge was acquired.

A. I am reasonably well acquainted with the Mississippi River, and also have a general acquaintance with the width of said river from Cairo to the Gulf; but I am far better acquainted with it and its width from the mouth of the Arkansas River south. My knowledge of said river is acquired from observation and from study of surveys and charts of the river made by the engineers under direction of the Mississippi River Commission, reports of which I have as records in my office, and which are generally relied on by engineers en-

441 gaged in river improvement and levee work.

Int. 6. If you shall answer that you are acquainted with the width of the channel of the Mississippi River from Cairo to the Gulf, please state the average width of the river over the different reaches, from Cairo to the Gulf as follows:

From Cairo to the Arkansas River
From the Arkansas River to Vicksburg
From Vicksburg to Natchez
From Natchez to Red River
From Red River to Scott's Bluff
From Scott's Bluff to Donaldsonville

giving the width of the channel, first with the river bank full, and second at law water.

A. From Cairo to the mouth of the Arkansas River no accurate surveys have been made of the width of the channel, but the average width from the mouth of the Arkansas River to Vicksburg the bank full stage is 5200 feet, low water 2260 feet;

From Vicksburg to Natchez average width the bank full stage 5328 feet; at low water 2712 feet.

From Natchez to Red River, average width for bank full stage 4800 feet; at low water 2890 feet.

From Red River to Scot Bluff average width bank full stage 3693 feet; at low water 2788 feet;

From Scot Bluff to Donaldsonville average width for full bank stage 3145 feet; at low water 2800 feet.

The sources from which I obtain this information are: for the reach from Arkansas River to Vicksburg, from the Report of the Mississippi River Commission for 1896; the width of the other reaches were obtained from the Report of the Mississippi River Commission for the year 1897. The record of these surveys made under the direction of the Mississippi River Commission, and from which this data was taken are relied on by all of the engineers engaged in the river improvement, whether surveying under the River Commission or acting for the various State Levee Boards.

Int. 7. What is the narrowest point of the channel in each
442 of the reaches above indicated, giving its width in feet.

A. In the reach between the mouth of Arkansas River and Vicksburg, the narrowest width is 1500 feet at low water. From Vicksburg to Natchez the narrowest width at low water is 1200 feet; From Natchez to Red River the narrowest width at low water is 1560 feet. From Red River to Scot Bluff the narrowest width at low water is 2000 feet. From Scot Bluff to Donaldsonville the narrowest width at low water is 2300 feet.

The widths above given in this answer were taken from the records of the Report of the Mississippi River Commission referred to in my answer to Interrogatory No. 6.

Int. 8. Where there is an island in the river, state what is the usual width of the river from the island to the main shore on the channel side with reference to the rest of the river channel.

Ans. Where there is an island the width of the river on the channel side of the island is usually about the same as the width of the channel at other places along the river.

Int. 9. State any other matters and things within your knowledge, material to either party.

A. I don't know of anything else material to the case except what I have already answered.

Cross Interrogatories.

Cross Int. 1. If you answer to Int. 4th in chief that you, as a civil engineer, have been engaged in river and levee work, then we would ask you to state particularly

(*a*) The date at which you were first thus employed, by whom and where, and what were your duties.

(*b*) In like manner, state your next employment in river and levee work—at what point, the date, in what capacity, and when you quit that employment.

(*c*) In like manner, give a history and duration of each employment on river and levee work from the time you speak of, in
443 Paragraph (*b*) of this question, at what point or points, designating the kind of work during each employment, for whom working, up to the present time, giving date of commencement and ending of each job.

Please answer each paragraph fully.

A. (*a*) December 1883 I was first employed by the Mississippi Levee Board as Assistant Engineer in making surveys and in superintending the construction of levees.

(*b*) From November 1892 until August 1898 I was employed by the United States in work under the Mississippi River Commission in the Third District Mississippi River Improvement, as U. S. Inspector and Surveyor, in making surveys and in charge of the construction of levees.

(*c*) From August 1898 to this date I have been Chief Engineer of the Mississippi Levee District which extends from the Southern end of Coahoma County, Mississippi, to a point in Warren County, just above the mouth of the Yazoo River, embracing a river front of 227 miles. This position entails upon me the planning, directing and supervision of all matters pertaining to the construction and maintenance of the levee system over which the Board of Mississippi Levee Commissioners have jurisdiction, to-wit: the 227 miles of river front above mentioned; it also brings me into frequent consultation with the officers of the Engineer Corps of the United States in charge of the River Improvement, and the Mississippi River Commission.

Cross Int. 2. If in answer to Int. 5 and 6 in chief, you undertake to give the average width of the channel of the Mississippi River from Cairo to the Gulf, and the various reaches mentioned in Int. 6, then please state whether or not your supposed knowledge of the average width of the river channel was derived from actual surveys or soundings made by you in person, or from public statements and maps, or from any other source than your own *personal knowledge*.

A. This cross interrogatory has been fully answered by me
444 in my answers to direct interrogatories No. 5 and No. 6 wherein is given the source of my information on the subject on which I was there interrogated.

Cross Int. 3. If you undertake to give the average width of the channel of the Mississippi River from Cairo to the mouth of the Arkansas River, please state the width of the river in April, 1897, at the following points, to-wit: Memphis, mouth of Arkansas River and opposite Island 76.

A. I do not know, as I have not before me the necessary data to answer the same.

Cross Int. 4. And if, in further answer to Int. 6 in chief, you attempt to give the narrowest point in the channel of the Mississippi River in the different reaches from Cairo to the Gulf, please state if you knew the width of the channel at Island 76 in 1818, 1829,

1830, 1840, 1850, 1854, 1860, 1870, 1875 and 1878? Answer this from actual knowledge.

A. I do not.

Cross Int. 5. If you ever in person made a survey of the channel of the Mississippi River at Island 76, please give the date of same, and for whom made, and under what circumstances you made that survey.

A. I have never made such a survey in person.

Cross Int. 6. If, in answer to Int. 8 in chief, where there is an island in the Mississippi River, you undertake to give "the usual width of the river from the main shore on the channel side with reference to the rest of the river channel," please state whether or not you spoke from actual knowledge, and actual measurement and survey in person of all the islands in the Mississippi River from Cairo to the Gulf.

A. I did not, but from a study of the charts and from a general observation of the river.

Cross Int. 7. Is it not a fact that the Mississippi River is rather an eccentric stream—often changing its channel from one side of the river to the other, often from one side of an island to the other side, frequently making cut-offs, and widening the channel at one point and on one side of an island; in other words, widening the channel at one point, scouring it out and deepening it at another, frequently changing the channel and running through chutes instead of the old river bed?

445

A. It is a fact that the River Mississippi is an eccentric stream and often changes its channel from one side of the river to the other; perhaps occasionally may change from one side of an island to another; it occasionally makes cut offs and does widen its channel at one point and on one side on an island. It does widen the channel at one point and at another deepens the channel, but seldom, if ever, does it return to the old river beds.

Cross Int. 8. Is it not a fact that there are frequently deep and heavy deposits made on an island in the Mississippi River in a single year?

A. Yes it is.

Cross Int. 9. Who appointed you to your present position?

A. I was elected to my present position by the Board of Mississippi Levee Commissioners.

Cross Int. 10. If, in answer to Int. 9 in chief, you make any further statement of facts other than theretofore testified to, please designate what part of such additional statement is on actual personal knowledge, and what part from hearsay, or information from others, or from what you have read or heard.

A. I made no answer to direct interrogatory No. 9 and consequently need make none to cross interrogatory No. 10.

(Signed) C. H. WEST.

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk, by W. Presley Feild, D. C.

446 UNITED STATES OF AMERICA,
WAR DEPARTMENT,
WASHINGTON, *June 3rd*, 1902.

I hereby certify that the sheets hereto attached are true copies of the originals on file in the office of the Chief of Engineers, U. S. Army.

(Signed) G. L. GILLESPIE,
Brig. Gen., Chief of Engineers, U. S. Army.

Be it known that G. L. Gillespie, who signed the foregoing certificate, is the Chief of Engineers, United States Army, and that to his attestation as such full faith and credit are given and ought to be given.

In witness whereof I have hereunto set my hand, and caused the seal of the war department to be affixed on this 3rd day of June, one thousand nine hundred and two.

[SEAL.] (Signed) WM. CARY SANGER,
Acting Secretary of War.

447 U. S. 126
RECONNOISSANCE
of the
MISSISSIPPI
and
OHIO RIVERS
1821

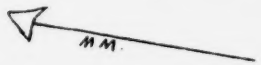
Ohio River from Louisville to its mouth.....in 20 Sheets.
Mississippi River from St. Louis to New Orleans.....in 45 Do.

126.

(Here follow maps marked pp. 448, 449 and 450.)

Table of Conventional Signs

used throughout this Reconnoissance of the Mississippi and Ohio Rivers



Magnetic Meridian

Island with growth of heavy timber

Island with growth of willows + subject to annual inundations.

Dry Sand Bar.

Rocks out of water

Rocks under water

Snags, Sawyers, Planters.

Line of shallow water

Direction of the current

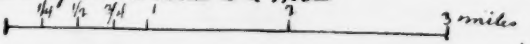
Farmhouses. Plantations

Line of the Channel

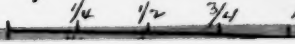
FOLD OUT IS TOO LARGE TO BE FILMED

Scales

Scale of the lengths one inch to a mile



Scale of the breadths, two inches to one mile



451 K. E. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 9, 1902.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed document, being an extract copy of Mississippi Swamp Land List No. 1, Grenada series, approved September 24, 1852, is, in so far as it relates to sections thirty-six and thirty-seven, Township twenty-one North of Range eight West, a true and literal exemplification of the original list in this office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[SEAL] (Signed) BINGER HERMANN,
Commissioner of General Land Office.

No. 1.

List of Lands selected for the State of Mississippi under the Act of Congress approved the 28th of September, 1850, as Swamp and Overflowed lands, in the Grenada District, viz:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September* 24, 1852.

The Selections embraced in the within list are hereby approved to the State of Mississippi under the Act of 28th September 1850, subject to any legal rights which may exist thereto.

ALEX. H. H. STUART, *Secretary.*

452 Swamp Lands.

Parts of sections.	Section.	Township.	Range.	Surveyed area.		Unsurveyed area.		Total area.	
				Acres.	H'dths.	Acres.	H'dths.	Acres.	H'dths.
E. ½ of N. W. ¼.....	1	20	1 E.	77	66	..	Pat.	No. 1	

An Additional List of Swamp and Overflowed Lands Selected for the State of Mississippi, under the Act of 28th September, 1850, in the Grenada Land District.

The whole of.....		5	20 N.	2 W.	603	00 A	m't	Pat. over	No. 1 253252	64
	* *			*			*		*	
These two tracts are suspended by direction of the Commissioner and not included in the patent.	The whole of.	36	21	8	674	20				
	" .	37	"	"	234	38	....	....	1138	58
	* *			*			*		*	
Total.....		....	.....	.....	....	....	....	....	710692	72
								Corrected total.	710782	04
								See T. 21 R. 8 W.....	908	58
									709873	46
								Deduct See T. 20, R. 9 W.....	332	05
								True total..	709541	41
								Deduct See letter of Jan. 24/55 to Gov.....	479	43
									709061	98

Patent No. 2 includes all the lands in No. 1 of this list, and is dated March 30th 1853, containing an area of 192,189 25/100 acres, and is recorded in Vol. 1 pages 22 to 31, inclusive, and was transmitted to Gov. of Miss. with Com'r's letter dated April 8th 1853.

P. DAGGY, *Cl'k.*

DISTRICT OF COLUMBIA, *City of Washington, ss:*

Before me Henry R. Day a Justice of the Peace within and for said City personally came John Rayburn, a respectable citizen of the State of Mississippi, and being by me duly sworn deposes and says on his oath, that he is well acquainted with all the tracts of land embraced in the foregoing list, and additional list, that he understands and has examined the lines of the greater portion
453 thereof, and that the greater part of every forty acre tract contained in said list are subject to overflow, and inundation and has been commonly so subject, for a number of years past, during the seeding, growing or harvesting season so as to destroy or injure a crop, and therefore unfit for cultivation, without artificial drainage or embankment; and such of said tracts as are not subject to overflow are low, wet, swampy and marshy and are unfit for cultivation from that cause; and that he verily believes that the whole of said lands enure to the State of Mississippi, under the Act of 28th September 1850, as Swamp and Overflowed Lands, except such as may be rightfully claimed or held by private individuals, and further saith not.

(Signed) JOHN RAYBURN.

Subscribed and sworn to before me this 12th day of June, A. D. 1852.

(Signed) HENRY R. DAY, [SEAL.]
Justice of the Peace.

CITY OF WASHINGTON, D. C., *June 12th*, 1852.

We the undersigned citizens, and delegation in Congress from the State of Mississippi, do hereby certify that we are personally acquainted with General John Rayburn, who executed the foregoing affidavit, and from our knowledge of his former occupation in connection with the public lands in the State of Mississippi, we have no hesitation in saying that he is well acquainted with the character of said land; and that we know him to be a gentleman of undoubted character for truth and veracity.

(Signed) S. ADAMS, *U. S. S.*
B. D. NABERS.
J. THOMPSON.
W. BROOK.

GENERAL LAND OFFICE, *September 23d*, 1852.

Respectfully submitted for approval.

JOHN WILSON, *Commissioner.*

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Clerk.

Book.	Page.	Grantor.	Grantee.	Division of section.	Instrument.	Date signed.			Date filed.		
						Day.	Month.	Year.	Day.	Month.	Year.
O. E.	149	State of Miss.....	W. G. Ford	The whole.....	Patent....	9	Jan'y	1854			
F	199	J. J. Ross.....	Clark & Stark	All.....	T. Deed..	9	Jan'y	1857	26	Jan'y	1857
X X	25	State.....	J. T. Currie *et al*.....	All.....	Deed.....	28	Sept.	1891	2	Nov.	1891
Y Y	60	J. T. Williams...	J. T. Currie *et al*.. ..	All.....	"	"	Jan'y	1892	8	Feb'y	1892
"	458	M. B. Hull *et ux*.	F. E. Larkin, Trust...	All	D. T.....	"	March.	1892	29	March.	"
B-10	41	State Miss.....	Elizabeth S. Woods..	Lot 4 & N² Lot 5.	Patent....	10	Aug.	1869	12	Aug.	1899
"	42	Same	Malvina May Scott...	" 6 & S² Lot 5...	"	"	"	"	"	"	"
"	44	Same.....	E. M. Scott.....	" 7 & N² " 8.....	"	"	"	"	"	"	"
"	46	Same....	W. A. Yerger...	" 1 & N² " 2.....	"	"	"	"	"	"	"
"	47	Same.....	E. H. Woods	" 3 & S² " 2.....	"	"	"	"	"	"	"
"	43	Same.....	W. H. Fitzgerald.....	S² Lot 8	"	"	"	"	"	"	"
D-3	364	N. B. Hull.....	R. J. McGuire	All.....	Deed. ...	26	Aug.	"	13	Sept.	"
D-3	364	J. T. Currie	R. J. McGuire	All	Deed.....	.....	Sept.	"	13	"	"
D-4	319	R. J. McGuire ...	W. H. Fitzgerald *et al*.	Lots 1, 2, 3, 4, 5, 6, 7 & 8.	Deed.....	12	Oct.	"	16	Oct.	"
D-3	412	E. H. Woods *et al*..	Same.....	" 1, 2, 3, 4, 5, 6, 7 & 8.	"	12	"	"	20	"	"

THE STATE OF MISSISSIPPI, *County of Bolivar:*

I, L. E. Edwards, clerk of the Chancery Court in and for said County and State, and having in keeping in my said office the land records of said County, hereby certify that the above is a true, perfect and complete copy of the book in my office known as "Abstract of Title Book" Nos. 1 and 3, in so far as the same relate to Section 36, Township 21, Range 8 West.

Given under my hand and official seal at my office in the town of Rosedale, Miss., this the 8th day of November, A. D. 1905.

[L. S.]

L. E. EDWARDS, *Chancery Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell, Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the clerk of said Court, duly elected and qualified, and his said certificate and attestation are in the form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court and that said court is a court of record.

Given under my hand and seal, at Greenville, Miss., in 7th Ch'c'y Dis't this 11th day of November, A. D. 1905.

L. E. EDWARDS. [SEAL.]

PERCY BELL, *Chancellor.*

[L. S.]

Endorsed: Filed Dec'r 20, 1905. W. P. Feild, clerk.

Section 37, Township 21, Range 8 West.

Book.	Page.	Grantor.	Grantee.	Division of section.	Instrument.	Date signed.			Date filed.		
						Day.	Month.	Year.	Day.	Month.	Year.
O. E.	149	State of Miss....	W. G. Ford.....	The Whole	Patent...	9	Jan.	1854			
X. X.	24	State	J. T. Currie *et al*.	All fractional	Deed	26	Oct.	1891	2	Nov.	1891
Y. Y.	60	J. T. Williams...	" " "	All..	"	28	Jan.	1892	8	Feb.	1892
Y. Y.	458	N. B. Hull *et al*...	F. E. Larkin, Trustee.	All.....	D. T.....	28	M'ch	1892	29	M'ch	1892
B-10	45	State of Miss.....	M. Y. Scott.....	Lots 1 & 3.....	Patent...	10	Aug.	1899	12	Aug.	1899
B-10	43	Same.....	W. H. Fitzgerald.....	Lot 2.....	Patent...	10	Aug.	1899	12	Aug.	1899
D-3	364	N. B. Hull.....	R. J. McGuire	All.....	Deed	26	Aug.	1899	13	Sept.	1899
D-3	364	J. T. Currie.....	R. J. McGuire	All..	Deed	.....	Sept.	1899	13	Sept.	1899
D-4	319	R. J. McGuire ...	W. H. Fitzgerald *et al*.	Lots 1, 2 & 3.....	Deed	12	Oct.	1899	16	Oct.	1899
D-3	412	E. H. Woods *et al*.	Same	Lots 1, 2 & 3.....	Deed	12	Oct.	1899	20	Oct.	1899

STATE OF MISSISSIPPI, *County of Bolivar:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County and State hereby certify that the above is a true, perfect and complete copy of the book in my office known as "Abstract of Title Book" Nos. 1 and 3, in so far as the same relate to Section 37, Township 21, Range 8 West.

Given under my hand and seal at my office in the Town of Rosedale, Miss., this the 8th day of November, A. D. 1895.

[SEAL.] (Signed) L. E. EDWARDS,
Chancery Clerk.

STATE OF MISSISSIPPI, *County of Bolivar, ss:*

I, Percy Bell, Judge of the Chancery Court of said county, being the sole presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and is now the Clerk of said court, duly elected and qualified, and his certificate and attestation is in due form of Law and by the proper officer, and that the seal hereto attached is the seal of said Chancery Court and that the said court is a court of record.

Given under my hand and seal, at Greenville, Miss., 7th Ch'c'y Dis't, this 11 day of Nov. A. D. 1905.

(Signed) L. E. EDWARDS. [SEAL.]
[SEAL.] PERCY BELL, *Chancellor.*

Endorsed: Filed Dec. 20, 1905. W. P. Feild, Cl'k.

456 *Trust Deed.*

J. J. Ross, Chas. Clark & P. B. Stark.

This Indenture made and entered into this the ninth day of January in the year of our Lord one thousand eight hundred and fifty seven, between J. J. Ross of the County of Bolivar, state of Mississippi, of the first part, and Charles Clark and Peter B. Stark of the same County and State of the second part: Witnesseth: That the parties of the first part for the consideration hereinafter mentioned as well as in consideration of the sum of five dollars, to them in hand paid, the receipt of which is hereby acknowledged, have given, granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, convey and confirm to the parties of the second part the following described lots or parcels of land lying and being in the County of Bolivar, State of Mississippi, to-wit:

Section 36, township 21, Range 8. Section 31, township 21, Range 7, Section 6, township 21, Range 7, having been conveyed to the said J. J. Ross by the State of Mississippi, and by — Smith of Sweetwater, Alabama, together with the following named eighteen slaves: Samuel aged 19 years, Abraham, aged 18 years, Hiram, aged 19 years, Edmond, aged 19 years, George, aged 15 years, William, aged 15 years, Martha, aged 14 years, Homer, aged 16 years, Rueben, aged 15 years, Caroline, aged 16 years, Catey, aged 17 years, Sandy, aged 25 years, Abraham, aged 24 years, Calvin, aged 20 years, Malinda, aged 21 years, Lucy, aged 23 years, Philis, aged 11 years, Alex, aged 20 years.

To have and to hold the said sections of land with all the improvements thereon and the said slaves to them the said parties of the second part, as joint tenants, and not as tenants in common. In trust, however, for the following purposes and none other, that is to say, said J. J. Ross being indebted to Fellows & Company of the city of New Orleans, La., in the sum of Seventeen Thousand One Hundred and thirty dollars and Twenty Cents, as evidenced by his two promissory notes dated January 9th, A. D. 1857 for Eighty Five Hundred and Sixty Five Dollars and Ten Cents, each falling due eleven and twelve months from date thereof, and bearing ten per cent. per annum interest from maturity, to final payment. It is the true intent and meaning of these presents that the said trusee, or the survivor of them shall at the request of the said Fellows &
457 Co. at any time after the maturity of said note or either or any of them, if the money intended to be secured it with the interest shall remain due and unpaid, proceed to sell said property at public auction, or so much or such parts thereof as may be required to be sold for the payment of the sum or sums that may, as aforesaid, remain in arrears, they, the said trustees or the survivor of them, having first given thirty days notice of the time and place of sale, either by advertisement in some newspaper published in Bolivar County, or posted at the door of the Court House of the said County, and out of the proceeds of any sale that may be made the expenses

of executing this trust are first to be deducted and paid, and on further trust that they the said trustees or the *the* survivor of them shall when all the notes with interest are fully paid re-convey to said J. J. Ross the above described property, or such parts of it as may remain unsold.

In witness of all of which the party of the first part has hereunto set his hand and affixed his seal the day and year above written.

J. J. ROSS. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me Daniel J. Recardo, a commissioner in and for the State of Louisiana, duly commissioned and authorized by the Governor of the State of Mississippi, the above named J. J. Ross, to me well known to — the individual named in and who executed the foregoing instrument of writing, and acknowledged that he had executed same for the uses, purposes and considerations therein contained and set forth.

In testimony whereof I, the said Commissioner, have hereunto set my hand and affixed my official seal at New Orleans, the ninth day of January A. D., 1857.

D. J. RECARDO, [SEAL.]
Commissioner for Mississippi.

STATE OF MISSISSIPPI, *Bolivar County:*

I, Isaac S. Robinson, Clerk of the Probate Court in and for said County, do hereby certify that the foregoing deed was filed in my office for record January 26th, 1857 and that the same has been duly recorded in Deed Book "F" pages 199, 200 & 201.

Given under my hand and the seal of the said Court at office, this 27th day of January, A. D. 1857.

[SEAL.] I. S. ROBINSON, *Clk,*
By WM. W. ROBINSON, *D. C.*

458 THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for the said County and State, and *Ex-Officio* Recorder of deeds, and having in my official keeping as such the records of deeds of said County, do hereby certify that the above and foregoing three (3) pages contain a full true, complete and correct copy of a deed of trust which is of record in my said office in Deed Record Book "F" page 199 *et seq.*

Given under my hand and official seal of office this the 11th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk,*
By R. B. JOHNSON, *D. C.*

THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell, Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature ap-

pears to the annexed and foregoing certificate and attestation was at the date thereof, and now is the Clerk of said Court, duly elected and qualified and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is the Court of Record.

Given under my hand and seal, at Indianola, Miss., this — day of December A. D. 1905.

L. E. EDWARDS, [SEAL.]
PERCY BELL, *Chancellor.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned, Clerk of the Chancery Court of the County of Bolivar, in said State (said Court being a Court of record, and having an official seal), do hereby certify that Percy Bell whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the 7th Chancery Court District of said State, which said District in-
459 cludes the said Bolivar; and that said Percy Bell as aforesaid, i*n* now, and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office, at Rosedale, Miss. this the 14th day of Dec., A. D. 1905.

L. E. EDWARDS, *Clerk.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

460 THE STATE OF MISSISSIPPI:

This indenture made and entered — on this the 28th day of September, A. D. 1891, between the State of Mississippi, o*n* the first part, and J. T. Currie and M. A. Hall of the second part, witnesseth: That whereas there was sold on the 6th day of March, A. D. 1882 to the State of Mississippi for taxes due the State the following tract of land, to-wit:

Division of section.	Section.	Township.	Range.	Acres.
All.....	36	21	8 W.	824

situated in Bolivar County, containing eight hundred and twenty-four acres, more or less. And whereas the party of the second part desired to purchase the tract under the provision of the laws of Mississippi, in such cases provided and has this day applied to purchase the said land and paid the sum of one hundred and fifty-four dollars and six cents. And in consideration of the premises, and the amount paid to the State of Mississippi, — in accordance with the Statutes of the State of Mississippi has this day bargained, sold and co-veyed, and by these presents do- bargain, sell and convey unto the said party of the second part, their heirs and assigns forever, the aforesaid tract of land above described, to have and to hold the same to the said party of the second part, their heirs and assigns forever.

The State of Mississippi hereby warrants the title to the said lands according to the Statute in such case made and provided and not otherwise.

In testimony whereof these presents are signed, sealed and delivered in the name of the State of Mississippi by W. W. Stone Auditor of Public Accounts, who has hereunto subscribed his name and affixed his seal of office this the 28th day of September, A. D. 1891.

[SEAL.] W. W. STONE,
Auditor of Public Accounts.

Filed For Record Nov. 2nd, 1891, at 1:40 o'clock P. M. and truly recorded Nov. 2nd, 1891.

T. P. McGUIRE, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for said County do hereby certify that the foregoing one page contains a whole, true and correct copy of a certain deed given by the
461 State of Mississippi to J. T. Currie and M. A. Hall as the same appears on pages twenty-five and twenty-six of Book XX of the Records of Deeds in my office.

Witness my hand and official seal this the 13th day of October, A. D. 1903.

[SEAL.] (Signed) L. E. EDWARDS, *Clerk.*
By P. N. McGAUGHEY, *D. C.*

STATE OF MISSISSIPPI, —— *County:*

I, Cary C. Moody, sole presiding Chancellor of the Seventh Chancery Court District of the State of Mississippi (said District including the County of Bolivar) do hereby certify that L. E. Edwards whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the Clerk of the said Chancery Court of the County of Bolivar in said State, duly elected, qualified, and that said attestation is in due form.

Witness my signature at Indianola, Mississippi, this the 16th day of October, A. D. 1903.

(Signed) CARY C. MOODY,
Chancellor.

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned Clerk of the Chancery Court of the County of Bolivar in said State, (said Court being a Court of Record and having an official seal), do hereby certify that Cary C. Moody, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the Seventh Chancery Court District of said State, which said District includes the said County of Bolivar, and that the said Cary C. Moody, as aforesaid, is now and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office at Rosedale Mississippi, this the 17th day of ——, 1903.

[SEAL.] (Signed) L. E. EDWARDS, *Clerk.*
By P. N. McGAUGHEY, *D. C.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

462 *Deed.*

J. T. Williams
to
J. T. Currie & M. A. Hull.

In consideration of One Hundred Dollars cash in hand paid me by J. T. Currie and M. A. Hull, receipt of which is hereby acknowledged, I, by these presents do release and quit claim to said J. T. Currie and M. A. Hull all my right title and interest in and to the following described land to-wit:

All of Sections Thirty-six (36), and Thirty-seven (37), Township Twenty-one (21) Range Eight (8) West, situated in the County of Bolivar and the State of Mississippi.

Witness my signature the 28th day of January, A. D. 1892.

JAMES T. WILLIAMS.

STATE OF MISSISSIPPI, *County of Washington:*

Personally appeared before me, a Notary Public for the City of Greenville, the within named J. T. Williams, who acknowledged that he signed and delivered the fore-going deed on the day and year therein mentioned.

Given — my hand and official seal this 28th day of January, 1892.

[SEAL.] J. H. ROBB,
Notary Public.

Filed for record Feby. 8th, 1892, at 12 o'clock and 42 minutes, P. M., and truly recorded March 1st, 1892.

T. R. McGUIRE, *Clk.*
—— ——, *D. C.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court in and for the said county and state, do hereby certify that the fore-going is a true and correct copy of a deed which is of record in my office in Deed Record Book "Y-Y", page 60, as full and complete as the same appears therein.

Given under my hand and official seal, at my office in the town of Rosedale, this the 11th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk,*
By R. B. JOHNSON, *D. C.*

463 THE STATE OF MISSISSIPPI, *Bolivar County, ss:*

I, Percy Bell Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of the said Court, duly elected and qualified, and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is a Court of Record.

Given under my hand and seal, at Indianola, Miss. this — day of December A. D. 1905.

L. E. EDWARDS. [SEAL.]
PERCY BELL, *Chancellor.*

STATE OF MISSISSIPPI, *Bolivar County:*

I, the undersigned, Clerk of the Chancery Court of the County of Bolivar in said State (said Court being a Court of record, and having an official seal), do hereby certify that Percy Bell, whose genuine signature appears to the annexed and foregoing attestation, is now, and was at the date thereof, the sole presiding Chancellor of the 7th Chancery Court District of said State, which said District includes the said County of Bolivar; and that said Percy Bell as aforesaid, i*n* now, and was at the date of said attestation, duly commissioned and qualified.

Given under my hand and seal of office, at Rosedale, Miss. this the 14th day of December, A. D. 1905.

L. E. EDWARDS, *Clerk.*

Endorsed: Filed December 20th, 1905. W. P. Feild, Clerk.

464 STATE OF MISSISSIPPI, *Bolivar County:*

Whereas, it appears to the Board of Spervis*ions* of said County that Sections 36 and 37 in Township 21, Range 8 West, have by error been omitted from the assessment rolls of said County, and by this means have escaped assessment. It is now ordered that the said lands be placed upon said roll, and this having been done, and the Sheriff having assessed same at one dollar per acre for the fiscal year 1881, his action in this regard is now confirmed, and if the taxes are not paid thereon for said year he is ordered to sell said land when he sells other delinquent lands for said year, and to sell same in the same manner as such other lands are sold. The said Sections 36 and 37 are outside of and unprotected by the levee and are not subject to levee taxes.

Ordered this the 12th day of December, 1881.

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, L. E. Edwards, Clerk of the Chancery Court and *Ex-officio* Clerk of the Board of Supervisors in and for said County and State, do hereby certify that the above and foregoing transcript is a true and

correct copy of an order passed by the said Board of Supervisors, and entered at their December Term, 1881 on the 12th day of December, A. D. 1881, as fully and completely as the same appears of record in my office, in Board of Supervisors Minute "D," on page 216.

Given under my hand and seal of said Board and said Chancery Court at my office in the town of Rosedale, Miss., this the 7th of November, A. D. 1905.

L. EDWARDS, *Clerk.*

THE STATE OF MISSISSIPPI, *Bolivar County:*

I, Percy Bell Judge of the Chancery Court of said County, being the sole Presiding Judge of the Chancery Court of said County, do certify that L. E. Edwards whose genuine name and signature appears to the annexed and foregoing certificate and attestation, was at the date thereof, and now is the Clerk of said Court, duly elected and qualified, and his said certificate and attestation are in due form of law, and by the proper officer, and that the seal hereto attached, is the seal of said Chancery Court, and that said Court is a Court of Record.

465 Given under my hand and seal, at Greenville, Miss. in the 7th Chancery District this 10th day of November, A. D. 1905.

L. E. EDWARDS. [SEAL.]
PERCY BELL, *Chancellor.*

Filed Dec. 20th 1905.
W. P. FEILD, *Clerk.*

466 And on February 23rd, 1906, the following proceedings were had, to-wit:

1304.

MOORE & MCFERREN
vs.
R. J. MCGUIRE ET AL.

Come the Complainants by Rose, Hemingway & Rose and Myers & Banks, Esqs., their Solicitors, and file herein their Assignment of Errors and Prayer for Appeal from the decree rendered in this cause to the Supreme Court of the United States, which prayer for appeal is allowed and said appeal is granted upon Complainants filing a bond therefor in the sum of five hundred dollars; thereupon came said Complainants by their said Solicitors and file herein their appeal bond in the sum of five hundred dollars which is examined and approved by the Judge of this Court.

467 Which petition for appeal and assignment of errors are as follows:

In the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas.

WILLIAM*d* MOORE and J. S. MCFERRIN, Suing as Partners, Doing Business under the Firm Name of Moore and McFerrin,

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON.

Come said plaintiffs by D. E. Myers and U. M. Rose, their solicitors, and *pary* an appeal to the Supreme Court of the United States from the final decree rendered in this cause during the present Term of this Court and present the following

Assignment of Errors.

1. The Court erred in holding that the Western channel of the Mississippi River formed at Island 76 the Western line of the State of Mississippi at the time of the admission of that State into the Union.

2. The Court erred in holding that the letter of Major Downing referred to in the opinion of the Court was admissible in evidence. Also in holding the letter of Jacob Thompson to be admissible.

3. The Court erred in holding that the lands in controversy are not a portion of the territory of Arkansas.

4. The Court erred in holding that the defence in this cause was not precluded by acquiescence and laches.

5. The Court erred in holding that the possession of said lands by the plaintiff was desultory and not permanent.

6. The Court erred in holding that the said lands are or ever were, in the County of Bolivar in the State of Mississippi.

7. The Court erred in holding that the said lands were ever at any time subject to taxation in the State of Mississippi.

468 8. The Court erred in holding that the decision of the special tribunal created in the State of Mississippi for the purpose of cancelling sales of lands for taxes not due, consisting of the Governor, Attorney General and the Auditor of Public Accounts, is not final and perpetually conclusive until reversed or set aside by some direct proceeding, and that the judgment rendered by said tribunal does nor preclude the defense pleaded in this cause.

9. The Court erred in not granting the prayer contained in the original and amended bills in this cause.

10. The Court erred in dismissing the suit for want of jurisdiction.

Appeal granted returnable in thirty days and upon execution of a bond in the penal sum of Five Hundred Dollars ($500.00) conditioned as required by law, the appeal to act as a supersedæs.

(Signed) JACOB TRIEBER, *Judge.*

Endorsed: Filed February 23rd, 1906. W. P. Feild, Clerk.

469 Which Appeal bond is in words and figures following, to-wit:

In the United States Circuit Court for the Eastern District of Arkansas, Western Division.

WILLIAM MOORE and J. S. MCFERREN, Suing as Partners Doing Business under the Firm Name of Moore & McFerren.

vs.

R. J. MCGUIRE, E. H. WOODS, E. S. WOODS, M. T. SCOTT, M. M. SCOTT, W. A. YERGER, W. A. FITZGERALD, C. L. JONES, JR., and HUBERT B. WILSON,

Know all men by these presents: That we the above named plaintiffs, William Moore and J. S. McFerren, as principals and Dale Wallace and J. S. Catherwood as sureties, are held and firmly bound unto the above named defendants, R. J. McGuire, E. H. Woods, E. S. Woods, M. T. Scott, M. M. Scott, M. A. Yerger, W. A. Fitzgerald, C. L. Jones, Jr., and Hubert B. Wilson, in the sum of Five Hundred Dollars to be paid to them, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this January twenty-second, 1906.

Whereas the above named plaintiffs have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled case by the said Court,

Now, Therefore, the condition of this obligation is such that if the above bound principals shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, else to remain in full force and virtue.

WILLIAM MOORE. [SEAL.]
JACOB S. McFERREN. [SEAL.]
DALE WALLACE. [SEAL.]
JAMES S. CATHERWOOD. [SEAL.]

STATE OF ILLINOIS, *County of Vermilion:*

470 On this day came before me a Notary Public in and for said County and State the above named sureties Dale Wallace and J. S. Catherwood, who, being duly sworn, each severally made oath that after payment of all debts, and setting aside property exempt from exemption, he is worth more than the sum of one thousand dollars.

Sworn to and subscribed before me.

Witness my hand and official seal this 25th day of January, 1906.
[L. S.] J. E. WHITMAN,
Notary Public.

My commission expires April 14, 1907.

Approved,
JACOB TRIEBER, *Judge.*

Filed February 23, 1906,
W. P. FEILD, *Clerk.*

471 UNITED STATES OF AMERICA,
Western Division of the Eastern District of Arkansas:

I, W. P. Feild, Clerk of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of the originals remaining of record in my office, and constitute a true copy of the record, assignment of errors and of all proceedings in case of Moore & McFerren *vs.* R. J. McGuire *et al.*

In Witness Whereof, I have hereunto set my hand and the seal of said Court, this fifth day of March in the year of our Lord, One Thousand Nine Hundred and Six and of the Independence of the United States of America, the One Hundred and thirtieth.

[The Seal of the Circuit Court, Western Division, U. S. A.]

Attest:

W. P. FEILD, *Clerk.*

472 In the Supreme Court of the United States.

MOORE & MCFERRIN, Appellants,
v.
R. J. MCGUIRE ET AL., Appellees.

It is agreed by counsel that in printing the record in this cause the following entries and documents may be omitted as shedding no light on the questions to be presented to this court.

Injunction bond	Folio	56,	57	
Oath of Receiver				
Bond of Receiver	"	58,	59,	60
Reports of receiver	"	61,	63,	102
Deposit by receiver	"	63,	64	
Order on receiver as to cutting timber		88,	89	
Entry as to report of receiver	"	101		
Entry as to duty of receiver	"	122		
Response of receiver	"	122		
Entry as to filing response	"	122,	124	
Entry as to report of receiver	"	124,	125	

Given under our hands this 12th day of March, 1906.

U. M. ROSE,
For Appellant.
J. M. MOORE,
For Appellees.

473 [Endorsed:] File No. 20,127. Supreme Court U. S. October Term, 1905. Term No. 625. William Moore and J. S. McFerran, partners, &c., App'ts, *vs.* R. J. McGuire *et al.* Stipulation to omit portions of record in printing. Filed March 26th, 1906.

Endorsed on cover: File No. 20,127. E. Arkansas C. C. U. S. Term No. 222. William Moore and J. S. McFerren, partners doing business under the firm name of Moore & McFerren, appellants, *vs.* R. J. McGuire, E. H. Woods, E. S. Woods *et al.* Filed March 14th, 1906. File No. 20,127.

Supreme Court of the United States, October Term, 1906.

No. 222.

WM. MOORE ET AL., Appellants,
vs.
R. J. MCGUIRE ET AL.

Additional Parts of the Record.

* * * * * * *

Report.

ARKANSAS CITY, *December 15th*, 1899.

To the Hon. John A. Williams, Judge of the U. S. Court, Western Division of the Eastern District of Arkansas:

The undersigned Receiver, heretofore appointed by your Honorable Court, wherein Moore and McFerrin are plaintiffs and R. J. McGuire *et al.*, are defendants, begs leave to submit the following report of his actions in the premises.

I found the 350 logs that were in a raft and anchored to the bank of Island 76, had been in the water so long that they had become water sobbed, and were in a sinking condition, so much so that I was unable to sell or dispose of them. I immediately, as soon as practicable, put a force of men to work bouying them up. The raft broke, and we were only able to save about 150 the other 200 sinking, were lost.

The remainder of the logs, 1990, measuring 507129 feet were sold at public sale bringing $4.10 per M., amounting to Two Thousand and Seventy-nine Dollars and Twenty-one Cents. ($2079.21.).

There having been no claims for labor liens presented to me, as contemplated in your order of October 23rd 1899, I have paid the proceeds of said sale into the Registry of your Honorable Court except a few incidental expenses as herein set forth, and accounted for by proper vouchers, to-wit:

		$2,079.21
Receipt of L. C. Jackson in charge of timber..	$14.00	
Receipt of J. W. Davis, Publisher, for advertising	5.00	
Receipt of J. S. Ross, Skiff hire and traveling expenses	32.45	
Making an expense account of.....	$51.45	51.45
Leaving a balance of.....		$2,027.76

which last named amount was this day paid into the registry of this Honorable Court.

Having fully and finally accounted for, and paid over, all the monies coming into my hands as such Receiver, I ask that this report be accepted, and in all things approved.

Respectfully submitted,

(Signed) J. S. ROSS, *Receiver.*

* * * * * * *

And on November 21st, 1902, the following proceedings were had to-wit:

1304.

MOORE and MCFERRIN
vs.
R. J. MCGUIRE ET AL.

It appearing to the Court that the report of J. S. Ross, Esq., Receiver herein, filed at a previous day of this term has had no exceptions filed thereto and the Court having examined the same and being now well and sufficiently advised in the premises considers that said report be and the same is hereby approved and confirmed.

It is further ordered by the Court, that said Receiver, J. S. Ross, be and he is hereby allowed the *sum sum* of Five Hundred Dollars for his services rendered herein, and the Clerk will draw his warrant for said amount in favor of said J. S. Ross, out of the fund in this Court in this cause.

* * * * * * *

IN THE

Supreme Court of the United States

OCTOBER TERM, 1906.

WILLIAM MOORE and J. S. McFERREN, Partners, doing business under the firm name of MOORE & McFERREN.....*Appellants*

v. No. 222.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, HUBERT WILSON and C. L. JONES .....*Appellees*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

BRIEF FOR APPELLANTS

I.

The following synopsis may assist the court in the hearing of this cause:

II.

THE PLEADINGS.

This is a suit involving the title to the lands comprising Island 76, formerly called Chapeau and Corn

Island, lying in the Mississippi river, about ten or fifteen miles below the mouth of the Arkansas river.

The Bill

Was filed in the court below on the 2d day of November, 1899, and contains substantially the following allegations: The island in controversy is a part of the territory of the State of Arkansas. The lands having been duly surveyed by the United States, were entered by various persons in the federal land office at Helena in that State in the year 1847, except a small tract known as the S. W. Fl. qr. Sec. 2 S., R. 12 W., which passed to the State of Arkansas under the Swamp Land Grant made by Congress by the act of September 28, 1850. The lands thus entered at Helena were all patented by the United States soon after the entries to the persons making the entries in the land office or to their assignees. Copies of the patents are made exhibits to the bill. (Tr. pp. 13-25.) The small tract of swamp land above mentioned was also patented to the person entering the same by the State of Arkansas in 1890. (Tr., p. 26.) The title to these lands passed to the plaintiffs by mesne conveyances; all of which documents are set out with great particularity in the bill, and were produced at the hearing of the cause.

By various mesne conveyances the title to all the lands became vested in Mrs. Sallie H. Murphy, who by her deed conveyed them to the plaintiffs on the 22d day of August, 1898.

The bill farther charges that defendants claim title under the State of Mississippi, as having passed to that State from the United States by reason of the Swamp Land Grant of 1850. Plaintiffs have been in possession ever since the execution of the deed to them. The lands lie in Desha County, Arkansas, and taxes have been regularly paid on them in that State ever since they were entered. They are of the value of more than two thousand dollars, exclusive of interest and costs. They were surveyed and platted by the United States as a part of the State of Arkansas, and the survey, known as "Pelham's U. S. Survey," was approved December 23, 1846. (P. 7.) The Mississippi river is the line between the two States.

It is claimed by the defendants that the lands are a part of Bolivar county, Mississippi, lying as they do opposite Desha county, Arkansas. Bolivar county was organized by an act of the legislature of Mississippi of February 9, 1836, which does not purport to include the island, but meanders with the east shore of the Mississippi river.

Revised Code Mississippi, 1857, Sec. 15, Art. 80, p. 63.

For the first time, about August 20, 1899, plaintiffs learned that the defendants were claiming the lands under some kind of a tax deed purporting to have been executed under the laws of Mississippi. Prior to 1882 neither that State nor Bolivar county had ever claimed

the lands; but in 1881 or 1882, changes having occurred in the channel of the river, the collector of Bolivar county, under an assessment to unknown owners made in Bolivar county, pretended to forfeit the lands for taxes to the State of Mississippi, which sold them to J. T. Currie and M. A. Hull; but in 1893, on application of the purchasers, this claim was abandoned, and the money paid by them was refunded to them by the State. (P. 9.)

In the summer and fall of 1898 plaintiffs established a camp, laid foundation for houses and tents on the lands, and cut a considerable amount of timber, making also a raft of timber which was anchored to the island.

About August 12, 1899, defendants attempted to take possession of the island by the intrusion of their agent, the defendant Jones, who seized on the raft of logs, claiming it and other timber, of the value of $2,075, for the cutting of which the plaintiffs had paid.

This illegal possession was however only maintained for a short time, after which the defendants then brought an action of replevin against plaintiffs in the circuit court of Bolivar county, Mississippi, for the timber that the plaintiffs had cut, and sent a sheriff of that county with a writ, under pretence of which the officer seized the property therein named, and placed it in the custody of one D. W. Wilson.

Defendants also brought an action of forcible entry

and detainer in Bolivar county against the plaintiffs to recover possession of the lands above described, and another suit in the same county to recover both the land and the timber.

Defendants make their claim under the Swamp Land Grant to the State of Mississippi of September 28, 1850; but long before that date the title to the lands had been divested from the United States by the entries made in the Helena land office in 1847, and by said patents from the State of Arkansas and the United States.

As the said pretended claim of title made by the defendants makes a cloud on the title of them, they say that their pretended claim is void, and they pray for an injunction to prevent farther trespasses, and for a receiver to take charge of the personal property and to sell it; that the pretended title of the defendants be declareed void; that the title of the plaintiffs be quieted; and for all other proper relief.

The receiver was appointed, injunction was issued as prayed. (P. 34.) The receivership having been completely wound up, and the receiver discharged, by agreement of counsel matters relating to the receivership are omitted from the printed transcript. (P. 303.)

Answer of the Defendants. (P. 40.)

The lands lie in Mississippi, and hence the court has no jurisdiction; and defendants are neither citizens or residents of Arkansas, or found in the district. Require proof of the title papers of the plaintiffs. Admit

the United States survey made by Pelham; but deny that it shows that the lands lie in Arkansas; on the contrary it shows that the main channel of the river was west of the island. By an act of the legislature of Mississippi, passed February 24, 1836, and by various similar acts, it has been declared that the middle of the river is the boundary between the two States. Denies that the State of Mississippi ever abandoned her claim to the island, or repaid any purchase money for the lands on the island sold at a tax sale. Denies that either party claims under the Swamp Land Grant. The lands were assessed for taxes in Bolivar county for 1881, and were forfeited to the State, and were sold and conveyed by the State to the defendants, who, having merged their several claims, now hold them in common. Exhibited with the answer is the tax deed to Currie and Hull above mentioned in the bill; also the tax deeds under which the defendants severally claim; also the deed by which their several titles were pooled. Also a copy of a deed from Currie and Hull to the defendants.

Replication to the answer was filed, and the cause was set down for hearing. (P. 50.)

III.

THE EVIDENCE.

By a written stipulation it was agreed by counsel that abstracts of title might be introduced, unless a

party should object to a particular conveyance twenty days before the hearing. Abstracts were accordingly filed, and the original conveyances constituting the title of the plaintiffs were produced without objection. By the same stipulation it was farther agreed that copies of letters passing between the United States, the commissioners of the General Land Office and the Attorney General of Mississippi, might be read, subject to objections for incompetency. (P. 60.) For abstract of the title of plaintiffs see pages 62, 65.

As to Possession.

C. W. ORTON for Plaintiffs (P. 145):

For a time I resided on Island 76. I was studying forestry. From the last of May to about the first of September, 1899, I was employed by the plaintiffs to look after the timber on the island. O. L. Sanders was there from the fall of 1898 cutting, hauling and shipping logs for them. He was gone when I got there, but a cook, a man named Perry, was there with a part of their plunder. The plaintiffs paid me for my services. [The witness produces letters and other papers confirming his statements.]

CLAUDE H. MOORE for Plaintiffs (P. 192):

I was general manager for the plaintiffs. Soon after the plaintiffs bought the island we placed O. L. Sanders in charge of it, and he cut, hauled and delivered several hundred thousand feet of logs during that year,

1898. He went back on the Arkansas river about the first of January, because the island was wet and muddy, returning in August, 1899, in order to get out the rest of the logs. During his absence I put C. W. Orton in charge to keep any one from molesting the property, and he remained until the receiver was appointed. Plaintiffs took possession about September 1, 1898. When Sanders left they had on the island a skiff and 500 or 600 logs ready to haul, and the frame work for barns and tents. He left Palmer Wilson in charge for the plaintiffs. [The witness produced papers showing his occupancy.]

O. L. SANDERS for Plaintiffs (P. 196):

Plaintiffs sent me to the island in September or October, 1898, to cut and deliver logs. We left in January or February, 1899, because the island was muddy, and we wanted to get some logs on the Arkansas river. We returned as soon as we got out the logs there. I left Wilson in charge during my absence, and he stayed until I got back in July or August, 1899. When we went away we left several hundred logs on the island, a skiff, the foundation of our tents and corral house with the barn for the stock. The framework of the barn was made of posts set down, with poles and rafters put in to hold up the fly to cover the stock. The tents were walled up with plank, three or four feet high. The poles were set in the ground with planks nailed around

them; and on these the tents were set. Returning we found these all there. We remained in possession until the receiver took charge.

HUBERT WILSON for the Defendants (P. 199):

I went to the island about September 22, 1899, as deputy sheriff, and levied a writ of replevin on some timber and a raft; that is, Mr. Edwards did, leaving me in charge. The writ was at the instance of Mr. McGuire, and against the plaintiffs. I stayed there until about the last of November with Charley Jones. Palmer Wilson, his father, and Orton were there. After four or five days Orton went down to the camp of Sanders, about 200 yards below us. Possibly two weeks later he said that he had been in possession of the place for several months for the plaintiffs at ten dollars a month. Plaintiffs gave bond for the raft and sold it. I saw the tents. None of them were floored. I levied on 1,210 logs. altogether. The logs were newly cut. They were valued in the writ at $1,415. When I went on the island there was a force there cutting timber.

ANDERSON HENCE, colored, for Defendants (P. 204):

I was on the island most of the summer and fall of 1899. Orton was not in charge. Palmer Wilson had the government lights in charge. Orton told me that Sanders would not pay him because he would not say that he was in charge of the island, or something of the kind. Orton never held possession of the land.

C. L. JONES for Defendants (P. 240):

Deputy assessor of Bolivar county. Was on the island in August, September and part of November, 1899. Went there to take possession for defendants, and found there Palmer Wilson, his father, and Orton. I posted up my notices, and no one objected to my taking possession until Sanders came. They all agreed to leave if I said so. One night a steamer landed with a logging outfit and some men. Orton, the two Wilsons and a little negro I had with me went down to the boat armed, and kept them from unloading their plunder and wagons. Orton assisted me in putting up notices against trespassers. One day Sanders with ten or twelve men and a logging outfit came on the island. Being instructed to use no violence I let them come on, though I objected. There was no property on the island except about 100 or 150 old logs; no framework of any tents, and no sign of any camp, and no skiff. I knew that some one had been cutting timber there, but I did not know who; and I never asked.

Evidence as to the Channel of the River.

Letter of Frank Johnston, attorney general of Mississippi, to William H. Sims, first assistant secretary of the Interior Department, dated Washington, D. C., March 22, 1904. (P. 66.)

This letter states that the lands had been entered at Little Rock, adding:

"From the information given me—but which is not conclusive—this island was originally on the western side of the stream, though it is now east of the channel."

Letter of Edward A. Bowers, assistant commissioner of the General Land Office, Washington, D. C., April 6, 1894, to Frank Johnston, attorney general of Mississippi. (P. 66.)

"I have to state that, as shown by the records, the greater part of said island was disposed of in 1847 at Helena, Arkansas, by cash purchase, and the remainder was approved to the State under the Swamp Land Grant on May 7, 1858. It was also approved to the State of Mississippi, September 24, 1852, under said grant."

R. J. MATTHEWS for Plaintiffs (P. 143):

In 1890 or 1891 Judge Murphy, husband of Mrs. Sallie Murphy, asked me to go to the island and see about some parties that were cutting posts there. I went there twice to see about it. The first time I knew about the channel there was in 1857, when I went down on a produce boat we were coasting down the river. The channel was on the Mississippi side; and we went down on the left. I was running a small packet from Memphis to Vicksburg in 1860 and 1861. We almost always went on the Mississippi side, and when the water was low we always went that way. When on through boat we went to the right of the island.

GEORGE MALONE for Plaintiffs (P. 153):

Have been captain and pilot on the Mississippi since about 1852. I remember the island since I was a boy about 1842. I was pilot of a flat boat about 1848 or 1850. The main channel was then on the left in going down. I was engaged in flatboating about two years. The channel changed, I think, about 1882. In high water we could go down on the west side; but in low water we had to go down the east side of the island.

MRS. L. M. BURRUS, for Plaintiffs (P. 188):

Will soon be 79 years old. Live at Neblett's Landing, just opposite Island 76. Except for two years I have always lived within a few miles of the same place. I went to Neblett's Landing in 1839, with my husband and lived on his plantation at Neblett's Landing. The main channel was east of the island. The boats passed directly in front of our house. I do not think that they could pass up the chute on the other side except in very high water. The channel on the Arkansas side was generally called the chute. I was 18 years old in 1839. From 1841 to 1849 the boats passed our door every day.

JOHN C. BURRUS for Plaintiffs (P. 190):

Fifty-three years old. Have known the island ever since I was a boy. In the fall of 1866 my brother was merchandizing on the river just opposite the island, and I attended the landing there for several months. The main channel was on the east side. Light draft

boats sometimes passed up the chute, but no heavy draft boats ever passed up the chute. I do not know when the channel changed. The change was rapid. In 1866 or 1867 a man named Sterling lived on the island. In 1866-7 the chute was a very narrow, shallow stream. My earliest recollection of the river was in 1857. In 1863 or 1864 I was placed on duty as picket at Bolivar at the lower end of the island for several weeks for the purpose of ascertaining the number of troops that went down the river; and the boats passed east of the island. The water was low at the time.

BEN G. WEEKS for Plaintiffs (P. 123):

I am clerk of Desha county, Arkansas, and as such I have the custody of the assessment and tax books of that county, which show that the lands in controversy were regularly listed and taxed since the year 1865. Some of the records have been lost or destroyed. I do not find any assessments or tax records in my office prior to 1865. Mrs. Sallie Murphy paid the taxes from 1884 to 1887, since which time the taxes have been paid by the plaintiffs.

E. H. NALL for Plaintiffs (P. 124):

I am State Land Commissioner for the State of Mississippi. The records in my office show that the lands in suit were *first* assessed in 1881 to unknown parties, and that they were sold for the taxes of that year, and were not redeemed, and were purchased from

the State September, 1891, by Currie and Hull, after having been sold to the State. [Witness copies the records in his deposition.] Under the entries on the record occurs the following *in red ink:* "Cancelled November 23, 1892, and State tax and int. refunded."

CROSS-EXAMINED.

The note *in red ink* resembles the handwriting of W. D. Holder, then deputy auditor of public accounts under W. W. Stone, auditor, in whose custody the books then were. Have examined the books, and find nothing relating to these lands prior to 1881. There are plats and field notes showing that the lands belong to the State of Mississippi. When lands are erroneously returned delinquent, they are sometimes stricken from the record.

MARSHALL J. MILLER for Plaintiffs (P. 111):

I will be 78 years old next month. I live in Memphis. Have been a pilot and steamboat captain on the Mississippi river for many years. I began as a pilot September 9, 1839. I have been acquainted with the channels of the river at Island 76 ever since that time. It was then on the Mississippi side, crossing from Cork's point to Wehawk plantation, which was then a wood-yard. This map (referring to map facing p. 176) shows the situation very well. Witness gives the names of various vessels on which he ran as master and pilot. I think the channel changed in the latter part of 1860.

It took several years to complete the change. We would run through the Arkansas channel for a short cut; but there was no business down there; but we went that way in high water. But the main channel was on the Mississippi side until about 1880.

CROSS-EXAMINED.

I was 17 years old in 1839. That was the year of the lowest water ever known. I started out as a pilot under my father and brother. My father was an old bargeman. For about three years I have been in poor health, and have not been on the river. In low water there was water on the west side of the island, and light craft could get up in low water. The channel on the western side was the widest, but that on the eastern side was the deepest. There was a change when the cut-off was made at Napoleon. Such changes are generally made gradually. My father began barging in 1802-3, and was barging on the Mississippi in 1812 during the war with England. My oldest brother was with him, and they told me that during the war the channel was on the east side. One of the first wood-yards established on the river was just above the island on the Mississippi side. My father and brother told me that there had never been any change in the channel at that point within their memory.

THOMAS A. WILCOX for Plaintiffs (P. 116):

Age 72; master and pilot of steamboats on the Mississippi river since 1847. I have been going up and

down the river ever since. When I first passed Island 76 the channel was on the east side. It was several years in making the change. We quit running the old channel about 1882 or 1884. We never had much business on the Mississippi side after that. After 1884 we had to go on the Arkansas side.

CROSS-EXAMINED.

When I first saw the island the channel on the Arkansas side was much wider. The banks have caved in since that time; and now the channel on the west side is much wider still; twice or three times as wide. When I first saw the place eight or nine-tenths of the water went down the east side; and it was much deeper than on the west side; a sort of funnel shape to receive the water. It took several years to make the change. I think this map (facing p. 172) is a good representation of when I first saw it.

RE-EXAMINED.

At that time a man named Rouse lived there on the Arkansas side. At one time there was a small horse gin there, several negro cabins and an overseer's place; all near the head of the island; but they are all caved in and gone. The channel runs in to the right of that now. The width of the channel did not matter; it was the depth. I often saw stock of various kinds fording the channel from the Arkansas side to the island.

In a second deposition the same witness says (p. 121):

I went to Napoleon, Arkansas, to reside in 1855, and stayed there until 1862; within 12 or 14 miles of Island 76. I bought property at Napoleon, and piloted boats on the river, which has been changed since then. It is now about one and a half or two miles farther west. A big sandbar there makes the river wider; and it would measure about that distance across it to the east side of the island; the main channel being now on the west side. The main channel was on the east side. I know it from my own knowledge, for I piloted there. I handled several hundred barges of coal annually while I lived there; and on one occasion I had what we term a fuel flat. I had several hundred tons of cheap nut coal, and one of my barges got loose, and drifted down to the head of the island, and lodged there. The channel was then on the east side of the island; and the barge lodged there because there was not water enough on the Arkansas side for it to go through; but there was enough on the Mississippi side if it had drifted that way, and it would have gone on down. While I lived at Napoleon the channel was always on the Mississippi side, east of the island.

A. E. DRINKWATER, for Plaintiffs(P. 119) :

Aged 62. Live at Memphis. Master and pilot of steam vessels since 1855. The channel was then on the Mississippi side. For the last few years, there has been water on both sides of the island. The change was

gradual. There has been water on both sides in the past few years, and I think that it was about 1882 that the western channel was usually navigated for heavy boats. Before that time in high water boats could run on the Arkansas side, but in low water they could run only on the Mississippi side. The channel is now on the west side. I suppose the change was going on for 10 or 15 years. I was thoroughly acquainted with the river in 1855. I think that the change was completed about two years ago.

CROSS-EXAMINED.

Referring to the "Choctaw" map, facing p. 176, says that it is similar; but there have been little excavations and cuttings, and the bank has changed appearance gradually, but the general outline has the same appearance.

X. J. PINDALL for Plaintiffs (P. 151):

Am a lawyer by profession. From 1862 until 1875 the main channel of the river was on the east side of the island. In 1862 Gen. Parsons crossed his command over the river at a point just below the island. I was on his staff. We camped about the mouth of Cypress creek, and in getting ready to cross the river it was a part of my duty to ascertain where the channel was so that we might watch the approach of the boats, and note the direction and distance from us. I found that the channel was east of the island. I lived at Napoleon

from January, 1866 to 1875. During that time I had interests on the island as attorney for others and for myself. As a matter of common history the channel changed during the early eighties.

W. Q. COLE for Plaintiffs (129):

Auditor of public accounts of the State of Mississippi, and as such I have the custody of the books relating to the assessment, collection and redemption of land of the State, among which are the assessment rolls from 1883 till to 1900. I can find but few back of that date. The assessment roll of Bolivar county for 1876 shows no assessment of the lands in suit; but they were assessed for 1883. The next assessment is for the year 1887, and the next is for the year 1892, when they are assessed in the names of Currie & Hull. They were also assessed for the year 1896. Disbursement register for 1892 shows warrant No. 4476, drawn in favor of Currie & Hull for $58.20, and the voucher shows that it was the State's proportion of the purchase money refunded. [Witness copies the records showing these facts, and exhibits a copy of the deed from the State to Currie & Hull, conveying the lands, dated September 28, 1891. (P. 134.) At the end of this deed appears the following memorandum, *in red ink:* "Land lies in Arkansas. Cancelled November 23, 1892, & State tax & int. refunded. W. W. Stone, auditor."] I have in my office the following letter by Hon. Frank Johnston,

attorney general of the State, which is as follows (P. 139):

"Office of Attorney General, Jackson, Miss.,
April 20, 1894.

Hon. W. W. Stone, Auditor of Public Accounts:

"Dear Sir: At your request I have examined the question whether Island No. 76 in the Mississippi river, opposite Bolivar county, belongs to the State of Mississippi, or the State of Arkansas.

"The exact point on which the inquiry turns is upon the fact as to whether the middle of the main channel was west of the island in 1817, the date of the admission of Mississippi into the Union. If the island lay on the east of that channel in 1817 then it belongs to Mississippi.

"After examining all sources of information open to me in the Department of the Interior at Washington, I am unable to get the exact data necessary to a definite decision of the question. There are no maps or surveys of the river made at or since that time showing the location of the island in 1817.

"I enclose a copy of a letter written by Hon. John Wilson, Commissioner of the General Land Office, to Hon. Jacob Thompson, of date February 28, 1855, showing that the ownership of the island has been claimed by each State. It was included in the general surveys from each State approved by the Department at Washington.

"It appears, however, that the entire island (except about 51 acres) was sold and patented to individuals in 1847 by the United States government through the United States Land Office at Little Rock, Arkansas.

"I am farther informed that the lands embraced in this island are not upon the books of the United States Land Office at Jackson, and have never been sold or dealt with at this latter office.

"Mr. Wilson expressed the opinion in his letter to Mr. Thompson that the island belongs rightfully to Mississippi; but qualifies this expression by saying that if the thread of the main channel could be shown to have been to the west of the island in 1817 then the ownership would be in Mississipi.

"He does not allude to the fact that the lands had been sold by the United States Government in 1847 through the United States Land Office at Little Rock.

"This fact is not conclusive; but it's the only evidence that I can gather which tends to solve the doubt. It tends strongly to show that the United States Government regarded the island at that time in the State of Arkansas.

"Again the owners of these lands have been for many years paying taxes to the State of Arkansas, and refusing to pay to the State of Mississippi.

"In 1882 these lands were sold at tax sale to the State of Mississippi, and in 1891 the State sold the same to Currie and Hull.

"In 1892 the conveyance to Currie & Hull was cancelled and money refunded to them by the auditor on the advice of Hon. T. M. Miller, then attorney general of the State, and on the approval of the governor, upon the ground of an erroneous assessment, the island *'being within the limits and the property of the State of Arkansas.'*

"I perceive no reason for disturbing this ruling and decision of your office.

"And so as it has been sold to the State again for taxes, and is now on the list in your office, I think it proper for you to adhere to your former ruling, and strike it from the list of lands in your office.

"I enclose the following documents to be filed with this communication, viz.: (1) Letter of Hon. John Wilson, Land Commissioner, February 28, 1855. (2) Letter of Edward A. Bowers, Assistant Land Commissioner, April 6, 1894. (3) Certificate showing entries of land at the United States Land Office at Little Rock.

"Very truly your ob't sev't,

"FRANK JOHNSTON, Attorney General." (P. 130.)

The witness continued as follows:

This letter is in the handwriting of Mr. Johnston, and is, I think, a part of the records of my office.

T. M. HENRY for Plaintiffs (P. 142):

This witness proves that the memoranda above referred to as being made on the records *in red ink* is in the handwriting of W. D. Holder, who was deputy auditor under W. W. Stone, who held office from 1886 to 1896. Holder died in 1900.

W. J. SHACKLEFORD for Defendants (P. 251):

Age 32; civil engineer. Refers to map attached to Nall's deposition, facing p. 234. The narrowest point on the channel east of the island is about 528 feet. Generally on the Mississippi river the land is higher at the bank than anywhere else and on the channel side, and clearings would generally be made on that side on account of that fact and of convenience of landings. I made an independent plat from the field notes referred to in Mr. Nall's testimony (Pp. 213 *et seq.*); and it tallied with the map above mentioned.

Cross-examined (P. 255):

The bank lines would not correspond on the Mississippi side with those on the map because the banks have caved 500 or 600 feet since the map was made. I never did any surveying on the island. When I first saw the island in 1892 there was an old house on the upper end of it; but I think that it is no longer occupied. I have not been on the island for about five years. There has been no caving on the island or on the adjacent banks since I have known the place.

Defendants read the following documents:

Letter from Governor McWillie of Mississippi, May 3, 1859, to Hon. Jacob Thompson, Secretary of the Interior, enclosing letters from Major Downing and William G. Ford, with the certificate of the Secretary of State, containing, as he says, all the information that he has about the island. (P. 68.)

This is indorsed:

"Interior Department. Received July 23, 1859. Referred to Commissioner of the General Land Office. W. W. Lester, Acting Chief Clerk."

Letter from W. G. Ford, Memphis, Tenn., April 29, 1859, to Governor McWillie, stating that he had purchased the lands in controversy from the State of Mississippi; that they had been disposed of as Arkansas lands; that Arkansas had not the shadow of a title to them; that they have been confirmed to the State of Mississippi seven or eight years previously. The writer urged the governor to get a patent to the lands from the United States. (P. 68.)

Letter of A. Downing to William G. Ford, dated Jackson, January 18, 1859.

The writer says that he had been traveling up and down the Mississippi river for more than 30 years. The channel on the Mississippi side was quite narrow, in the middle of it not over 100 yards wide. Had never heard of a steamboat going up or down it. Had heard

that a hunter standing on the mainland could shoot a deer on the island; and from his own observation, believed that this could be done. He examined the banks in 1835. The east bank of the river had not fallen in much.

Letter from John Wilson, Commissioner of the General Land Office, to Hon. Jacob Thompson, dated Washington, February 28, 1855. (P. 69.)

Believes from an inspection of the plats that the lands belong to Mississippi, and should not have been surveyed as lying in Arkansas. "Still I must qualify this opinion by stating that if it should be found by measurements and evidence taken on the spot that the middle of the main channel of the river as it existed in the year 1817, the date of the act of admission of the State of Mississippi prescribed her bounderies was situated east of the island, and remaind unchanged until the year 1836, the date of the act of admission of Arkansas as a State, then the island undoubtedly belongs to the latter. But if in 1817 the middle of the main channel was east of the island, and in 1836 was west of the island, then it will occupy the peculiar position of not being within the limits of either State according to the boundaries prescribed by the acts of admission."

Defendants read a letter from Thomas A. Hendricks, Commissioner of the General Land Office, Wash-

ington, D. C., July 23, 1859, in which he quotes the letter of Jacob Thompson above referred to, and continues as follows (P. 70):

"Under this view of the case if satisfactory proof shall be presented to this office that the middle of the main channel of the river in 1817 was on the west of said island, the jurisdiction thereof properly belongs to Mississippi; and in that event the title of the lands from the Government of the United States having vested in the purchasers as within the State of Arkansas, I am of the opinion that the State of Mississippi in virtue of her right under the Swamp Grant of 1850, should receive from the General Government an indemnity in kind equivalent to that received from the purchasers.

"With your letter I find the statement of A. Downing, dated 18 January, 1859, going to show that Island 76 belongs to the *Mississippi* side, and falls within our limits as defined by the treaty of 1783. Mr. Downing was formerly surveyor general of Mississippi, and great reliance is to be placed on his statement. If, therefore, you will add to it his affidavit with the testimony of any other distinterested witness, so as to bring the matter within the qualifications of my predecessor's opinion, and stating that the island is of a swampy character. Such is the additional testimony contemplated by Secretary McClellan's decision as required by the second section of the Act of 2nd March, 1855,

notwithstanding the island has been reported as swamp; the testimony will then be fully of equal grade to that required in analogous cases, and thereupon an account will be opened between the State and the United States with a view to her reimbursement by Treasury Warrant to the amount of cash which the United States by sale have received therefrom, and, in case of the location of any part of the island by warrants, or scrip, a certificate to that amount, authorizing the selection of other lands subject to entry at $1.25 per acre will be issued; such being the mode of indemnity prescribed by the second section of the Act of 2nd March, 1855, in cases where the lands taken by the Swamp Grant have been disposed of by the United States."

Defendants read letter from E. F. Best, Acting Commissioner of the General Land Office, dated "Department of the Interior, General Land Office, Washington, D. C., June 27, 1896," addressed to the Register and Receiver, U. S. Land Office, Jackson, Miss., as follows (P. 71):

"Sir:

"The plat of survey of T. 21 N., R. 8 W., Choctaw Meridian, approved in 1836, shows Island 76 in the Mississippi river to be designated as sections 36 and 37, containing 674.20 and 234.38 acres respectively; but such sections or lots are not subdivided into smaller tracts.

"Island No. 76 was also surveyed under the direction of the United States Surveyor General for the District of Arkansas, *and the* plat of *such survey was approved October* 23, 1846. The plat of each survey shows the main channel of the river to be west of the island, and consequently the island is in Mississippi. The plat approved October 23, 1846, shows Island 76 to be in Secs. 35 and 36, T. 11 S., R. 1 E., and in sections 1 and 2, T. 12 S., R. 1 E., 5th Principal Meridian. The lands on said island disclosed by the Arkansas survey were all disposed of in 1847, with the exception of the N. E. fractional quarter of Sec. 35, T. 11 S., R. 1 E., containing 35.92 acres; which tracts were approved to the State of Arkansas as Swamp Land, January 7, 1858.

"The lands on said island as shown by the survey of 1836 in T. 21 N., R. 8 W., were selected by the State of Mississippi as Swamp Land, June 12, 1852, List No. 1, and approved as such September 24, 1852, List No. 1, Grenada series. No part of the island has been patented to either State as Swamp Land.

"It is not necessary to consider the question of the irregularity of either survey. It is sufficient to state that the United States disposed of all the land except 51 acres prior to September 28, 1850, and consequently the tracts so disposed of were not granted by the Swamp Land Grant of that date.

"It is the intention of this office to submit the matter to the Secretary of the Interior, *with the recom-*

mendation that approval of so much of said approved Swamp Land, List No. 1, Grenada Series, as related to the island in question be revoked. At the same time a new list, containing 51 acres referred to (N. E. frl. quarter section 35, T. 11 S., R. 1 E., and S. W. fractional quarter section 2, T. 12 S., R. 1 E., 5th P. M.) will be submitted for approval to the State of Mississippi.

"You will advise the governor of the condition of the case, and of the proposed action, and allow him sixty days in which to object thereto, if he desires to do so; and in due time you will make full report in the premises to this office."

Endorsed: "Filed December 20, 1905."

WILLIAM McANDREWS, for Defendants, (P. 257):

It would be quite impossible to give a summary of this deposition, which is that of an expert, and is very voluminous. The witness says that he is a civil engineer; and if he is a competent expert concerning the speculative visions of the past history of the Mississippi river in which he indulges, he does not seem to be duly appreciated by an undiscriminating world, as shown by his own testimony. (P. 226.) He was first interviewed on the subject by Mr. McGuire, one of the defendants about a year before he was examined as a witness. (P. 282.) He knows nothing of the facts of the case from his personal knowledge, but traces the life history of the Mississippi river by a system of introspection and

a transcendental and *a priori* examination of various maps. Like most teleological discoursers he indulges in assumptions that make but small appeal to human credulity. Thus he says that the land contiguous to the bed of the river is generally higher than the land farther back, and that this is "particularly so as to islands" (P. 258); thus ascribing self- consciousness on the part of the Father of Waters; a view not yet wholly accepted by hydrographers.

In another instance the witness, referring to the map facing p. 234, which shows that the upper end of the eastern channel is wider than the central portion, he says that a channel of that sort would soon choke up, as the water could not get through (P. 261), though he admits that at the narrow part of the river it would scour the channel, and would make it deeper. (P. 270.) Looking at the U. S. survey (facing p. 172), made in 1846, we perceive that the west channel was considerably wider than the east channel, and that on the larger space on the map the surveyor wrote the words, "Mississippi River," with an arrow showing the direction of the current. From these indications the witness infers conclusively that the surveyor meant to show that the main commercial channel was west of the island, (p. 262, 268), though the map shows that the survey of the island is an extension of the survey on the adjacent mainland in Arkansas, and though the field notes made February 7, 1846, state expressly that the channel is on

the east side, "the main channel being on the left or Mississippi side of said island, and the inhabitants of said island vote and pay taxes in the State of Arkansas." (P. 173.)

The witness expressly states that he had never verified any of the surveys, and that he spoke only from the maps. (Pp. 267, 271.)

Because a surveyor crossed to the island from Mississippi in 1830, the witness infers that at that time he, the Surveyor General, crossed dry shod! He says, sagaciously: "When he made the survey in the fall of October, 1830, it was our customary dry season, and he had no trouble in crossing what I hold *must have been the bar* across the chute at the head of the island." (P. 275.) His conclusions as to the channel are based on inferences from the shape of the island and that of the shores of the mainland, and also on the supposed effect of natural laws always in conflict. These specutions are ostensibly based exclusively on the map.

C. H. WEST for Defendants (P. 284):

Civil engineer. The average width of the river from the Arkansas side to Vicksburg is full stage 5,200 feet, low water 2,260 feet. Where there is an island the channel side of the river is usually about the same as the width of the channel at other places along the river. I do not speak from actual measurements. The Mississippi is an eccentric stream, and often changes its channel from one side of an island to another; it occasion-

ally makes cut-offs, and does widen its channel at one point, and on one side of an island. It does widen the channel at one point, and at another deepens the channel; but seldom, if ever, does it return to the old river beds. Frequently deep and heavy deposits are made on an island in a single year.

CHARLES LE VASSEUER, for Plaintiffs (P. 155):

Civil engineer; graduated from Ecole Polytechnique School of France in 1878. Was in the army as field engineer and from 1883 to 1889 was chief engineer of the Panama canal. From 1890 to present time United States Assistant Engineer, Mississippi River Commission. Am acquainted with the Mississippi river, having surveyed in the 1st, 2d, 3d and 4th districts. I am familiar with the locality at Island 76.

The map made by McRee, surveyor of public lands, dated January 22, 1829 (facing p. 170), shows that a certain portion of it is sectionized, and that it is in Arkansas. There is nothing in the map to show which side of the island the channel was running. The width of a channel orbed of a river does not indicate the depth of the water. From the map I cannot tell the distance to the Mississippi shore. There is nothing to indicate the distance; there are only triangulations from the Arkansas shore toward several points on the Mississippi shore. It is only intended for a land map. The Pelham

map (facing p. 172) shows that the island was surveyed and sectionized as being in the State of Arkansas, There is nothing in the map to indicate a caving bank. The map seems to show a sand bar west of the island, and that the river flowed east of the island. The channel west of the island must have been dry at the time the sketch was made. The distance between the island and the Mississippi side cannot be taken as accurate, as no measure on the field notes is shown by triangulation or otherwise. The only distance shown accurately on this sketch and notes is the channel of the island west of Island 76 and the Arkansas shore. Referring to the map of May 31, 1830, (facing p. 176) the witness says that that map does not show the exact width of either channel. I suppose from the map and the statement on its face that the surveyor sectionized the whole of township 21 that it was not in his mind that the island belonged to township 21, R. 8 W. of the State of Mississippi, or else he would have also sectionized the island. The arrow on the maps only indicates the direction of the current. The old maps do not pretend to show where the channel of the river has been or is. The surveyor of public lands has nothing whatever to do with the river proper, its channel or its depth; but he only had to survey and sectionize the territory for the State in which he has been appointed. There is nothing on the map to compute the actual distance from the island

to the main bank of the State of Mississippi. The width of a chute is not in direct ratio with the channel of a stream. If the river is very wide, the bed is generally flat, and the channel is at its least depth; but where the river is confined between banks a short distance apart, it is generally where the deepest channel is found.

Referring to map facing p. 170, dated January 22, 1829, witness says that wherever triangulations were made, if they were correct, the distance from the Arkansas to the Mississippi shore can be obtained; but only at the points were they were made. You can get the distance from point marked A at the head of the island to point D on the Mississippi shore by scaling. The apex of the triangulations is very small, and the base is so small that that by skipping 300 or 400 feet would be detected. It is reasonable to suppose that the shore line is approximately correct as far as the sketch goes; but it is not sufficiently accurate to make any determination.

Map of 1830 (facing p. 176) would indicate that the engineer did not consider the island as within the State of Mississippi as he did not sectionize it.

Referring to map of 1830 (facing p. 176), the witness says that it does not show any traverse, though a note dated 1832 mentions a traverse. The map only contains 35 sections.

Cross-examined, p. 169:

I had no knowledge of these matters until 1892 except from the records in our office, which go back to 1874.

When Napoleon, Ark., was washed away old Island 76 was washed away, and a new island was formed east of the first island, now also known as Island 76. [On reading over the deposition the witness corrects this statement. He was at the time thinking of another island, called Dean's Island.] (Pp. 170, 183.)

This momentary failure of memory by the witness may open the way for criticism; but considering the great number of islands in the Mississippi, it is not surprising. On the other hand it demonstrates that the witness was testifying conscentiously, and not as a mere hireling expert, resolved to sustain the position of the plaintiffs at all hazards.

A question addressed to this witness by the plaintiffs having remained unanswered by inadvertence, an order for re-examination was granted by the court. (P. 76).

The witness exhibits a map, (facing p. 187,) made by the Mississippi River Commission of the United States in 1881, and says that it is correct. The witness explains this map in detail. He points out a sandbar at the head of the island. From this to the Mississippi shore the distance is 1850 feet. The witness gives the depths of the water in the eastern channel at different

points ranging from 12 to 77 feet. (P. 180). The lowest depth is next the island. The red line on the map represents the curving of the bank between 1881 and 1889 on the east side of the island. Witness gives the width of the eastern channel at different points as shown on the map; at one point 700 feet, at another about 2000 feet. In November, 1899, there was a sand formation and the chute was dry. At that time the river was very low. A gauge of 15 feet at Memphis would have thrown the water over the sandbar, and would, I suppose, have enabled steamers to run over it. At the head of the chute in 1881 the depth of the water was from 22 to 24 feet. Just below that on the Mississippi side it was 38 to 44 feet, and below on the same side it was 62, 44, 18 and 19 feet, graduating back to the island. The red and black lines show a width of 700, 1000, 950 and 700 feet going down the east channel, and that the eastern boundary of the island has been increased by sand formation between December, 1881 and November, 1899. In the latter year the island was attached to Mississippi by a sandbar when the river was extremely low, the gauge at Memphis being then 1-05. The maximum at Memphis is 39 feet. Island 76 is not an accretion to the State of Mississippi.

CROSS-EXAMINED.

In 1899 the channel for boats was west of the island. In 1881, as the map shows, the greater part of the water flowed west of the island. The island is

moving east. The "Choctaw map," (facing p. 176) made in 1830, shows by scaling that the shortest distance between the island and the Mississippi shore was about 530 feet. The map does not show any triangulations; but it is supposed to be a correct representation of the field notes. In 1889 the distance was 950 feet and in 1881 about 1000 or 1200 feet.

The "Choctaw" map does not show the depth of the water, and from it the volume of water cannot be computed. The witness explains the difference between a surveyor and an engineer. Knows the witness, McAndrews. He made application to enter the federal service as a civil engineer; and his application was rejected.

IV.

SPECIFICATION OF ERRORS.

1. The court erred in the admission in evidence of the letter of A. Downing.

2. The court erred in holding that the lands were in the State of Mississippi, and that they did not form any part of the territory of Arkansas.

3. The court erred in refusing to render a decree as prayed in the bill.

4. The court erred in dismissing the cause for want of jurisdiction.

NOTES ON THE EVIDENCE.

Arkansas was admitted into the Union by act of Congress of June 16, 1836.

5 Stats. at large, 50.

Mississippi was admitted by act of March 1, 1817.

3 id. 348.

The land on island 76 was surveyed as consisting of fractional section of townships 11 and 12, S. R. 1 E. of the 5th. Principal Meridian.

In the Mississippi Survey it is described as being in T. 21., R. 8 W., Choctaw District. (See map facing p. 176.)

The first map in point of date is that of McRee, Surveyor of Public Lands for Arkansas, facing p. 176, certified January 22, 1829. In this map the island is not sectionized; but the platting and triangulations show it to be in the State of Arkansas.

The next survey was made by William Pelham, Surveyor of Public Lands for Arkansas, facing p. 172, dated Little Rock, Dec. 23, 1846. In this map the island is sectionized as a part of Arkansas.

All of the lands were entered in the Helena land office in 1846, except about 51 acres passing to the State of Arkansas under the Swamp Land Grant of September 28, 1850, which, having been patented, was purchased by Mrs. Sallie H. Murphy, to whom State patents were issued in 1898. (P. 28.)

It was by a mere oversight that the Land Officers at Washington classified the lands on the island as Swamp Lands in Mississippi long after they had been entered and patented to private persons, and had been forever severed from the public domain. As to the 51 acres of Swamp Land, as the land had always had a status as Arkansas land, the certification that it formed a part of the State of Mississippi was a palpable error.

The island in question was never considered as forming any portion of the State of Mississippi. On the 24th February, 1836, the legislature of that State passed an act creating the county of Bolivar, describing the western boundary as proceeding from a point on the river, and continuing *"Thence up the Mississippi river"* to a certain other point; thus defining the western line of the county.

Rev. Code Mississippi 1857, Sec. 15, Art. 80, p. 63.

The map known as the "Choctaw" map, facing p. 176, dated 1830, showing the Mississippi survey, has the words "Mississippi River" and the emblematical arrow on the east side of the island, and represents that channel as being funnel shaped, as testified by the witnesses. The land on the Mississippi side is sectionized, but the island is not; showing that at that period the island was not supposed to be in Mississippi. It appears that after the survey was made a small piece of paper was attached to the field notes containing these words:

"Island 76 is in T. 21, R 8 W., and not in T. 22, R. 8 W., and that instead sections 6 and 7 should be sections 3, 6 and 37, T. 21. This island is properly within Township No. 21, in Range 8 West Distance X the chute of island 76 from the beginning of the east St. N. 40 E. 2920, intersecting the opposite traverse 20 ch. on the 1st. St." (P. 213.)

Though the field notes speak of a traverse, none is shown on the map.

Although the map purports to be a complete map of T. 21, R. 8 W., and most elaborate surveys were made on the Mississippi side, the map indicates no surveys of the island.

In the court below, as we understood counsel for defendants, it was argued that by the amended plat and by scaling at about the middle of the eastern channel it was shown that it was only about 528 feet wide. No actual measurement at this point by the surveyor appears to have been made; but it was claimed that this conclusion was correct because the shore survey of the island was made to correspond with the island survey and that calculations can be made from corresponding points on the island and on the mainland.

This contention is not correct because it is made clear that the island was surveyed—if surveyed at all—to fit on to another and a different township; and that, as it was discovered that it would not fit with township 22, it was transferred to the shore line of Township 21 without farther adjustment of the shore lines.

But if the different points on opposite shores did correspond, yet there is no way by which the width of the channel could be ascertained except by triangulations, unless the water was low enough to admit of the services of a chain bearer.

We submit that on the entire evidence in this cause it is impossible to deny that the main navigable channel of the river prior to 1881 or 1882 was east of the island, though boats could go down the west channel during high water. The witnesses for the plaintiffs testifying on this point had peculiar opportunities of knowing the facts of which they speak; and not a breath of suspicion attaches to any one of them. They corroborate each other, and they are not contradicted by any one. On the other hand they are corroborated by the verdict and solemn judgment of time.

If what we have said is a mere chimera, why was it that Mississippi never claimed the island? She was the first on the ground. That state was organized as such, nearly a decade of years before Arkansas was admitted into the Union. It may be argued that in those early years the island was of but little or no value. If so, it was not of much importance to either state; and such no doubt was the case. But it was worth as much to one state as to the other; and the fact of its small value shows that the surveyors and land offiers were not biased by any improper motives in forming their judgment that the island was a part

of Arkansas—a satellite so to speak—and was not a part of Mississippi. Fraud is never presumed; neither is mistake on the part of public officers acting in the sworn discharge of their duties; and certainly it requires very clear proof to raise even a shadow of suspicion when they are not here to speak for themselves, and have slept for many years the sleep of the just.

When the property was of such inconsiderable value there could be no inducement to fraud; and if fraud was extremely improbable mistake was impossible, because the question upon which this cause must turn was then easily determined simply by ocular inspection. No one, so far as shown, objected to the decision thus rendered; a decision that was known to all the world. Mississippi did not object; presumably because she had no reason to object; she never has objected during the sixty odd years that have passed since that decision was made. On the contrary she has repeatedly renounced any claim to the island. True, this has not been done by any legislative act. Acquiescence could hardly be expected to assume that form; but non-action by the legislature for so long a period is quite as significant as a legislative act would be.

There is one other matter that may be mentioned. We mean the measuring of the east channel by the scales of the different maps exhibited. We admit that this of itself would not be conclusive; yet it serves to support the other evidence in the record.

By the "Choctaw" map of 1830, facing p. 176, it is shown by scaling as follows:

1. That at the head of the east channel it was (as shown by field notes) 2920 feet. (p. 213.)

2. That at the narrowest point measured, it was 1320 feet.

3. That at the foot of the island it measured 1650 feet.

By McRee's map of 1829, facing p. 70:

1. At the head of the island 1320 feet.

2. In the middle of the island 1280 feet.

3. At the lower end, 1650 feet.

By map facing p. 234:

1. At the head of the island, 2900 feet.

2. At the narrowest point, 530 feet.

3. At the lower end, 990 feet.

With regard to the Pelham map it may be remarked that it not only shows that the island was a part of the State of Arkansas, but states that the inhabitants voted and paid taxes in Arkansas. There were, then, a few inhabitants there even at that early day; and his map shows four clearings on the eastern shore of the island.

The Government survey 1846, facing p. 172, shows the following:

1. At the head of the island, 2,960 feet.

2. At the middle of the island, 2,112 feet.

3. At the lower end of the island, 2,970 feet.

Great reliance is placed by the defendants on the sketch made by Capt. Young and Capt. Poussin of the Topographical Engineers in 1821, facing p. 288, purporting to be a "Reconnaisance of the Ohio River from Louisville to its mouth," and of the "Mississippi River from St. Louis to New Orleans" contained in 65 sheets. (P. 288.) We have here only an extract from this extensive map. The work, it is certified, was done during the months of October, November and December, 1821; but it is also stated that "the soundings on the bars were made during the months of October and November;" and as we cannot suppose that these officers made two journeys along these tremendous rivers, once to find depth currents and obstructions, and another to interview the countless sandbars never out of sight, it is certainly a fair conclusion that the month of December was occupied in comparing notes and constructing the map. Nor is there any statement as to the time actually employed in the whole work; only it is certified that it was done *within* three months.

When we look at a map of the United States the course of these two rivers have much the appearance of a corkscrew flattened by means of a heavy weight, showing continuous, incessant and most eccentric deviations from a straight line. The result of the convolutions of these giant and tortuous streams is that they are much longer than the expanses of country through which they run would indicate. As this ancient

map was not presented in court until the trial had proceeded for some time, (p. 84.) the plaintiffs had no opportunity to show the enormous difficulty of the work of making such a reconnaisance with any degree of accuracy, and the great length of time required for anything like an adequate result in the performance of such a stupendous undertaking.

But the judicial knowledge possessed by the court of the general physical conditions of the country, and of its leading landmarks renders the opportunity lost, a thing less to be regretted.

4 Wigmore Evidence, Secs. 2575, 2577, 2580.

Pennsylvania v. Wheeling Bridge, 13 How., 518, 561.

Cheeseman v. Two Ferry Boats, 5 Fed. Cas. p. 531.

The court takes judicial notice of geographical positions.

Peyroux v. Howard, 7 Pet. 342.

The fact that this case involves a dispute as to the boundary between two states "gives greater dignity and importance to such a controversy, and renders necessary a broader view than on a question as to the mere right of property."

Pennsylvania v. Wheeling Bridge Co. *supra.*

The court takes notice of the distances between well known points.

U. S. v. Thornton, 109 U. S., 659.

And of the navigabilty of rivers.

U. S. v. Rio Grande Irrigation Co., 174 id. 697.

"Indeed, it would seem absurd to require evidence as to that which every man of common information must know."

Id., 697.

And "the judges may refresh their memory and inform their consciences from such source as they may deem most trustworthy."

Jones v. United States, 137 U. S., 216.

Heath v. Wallace, 138 *id.*, 584.

But what is this paper? And for what purpose was it made?

Its title tells the whole story. It is a reconnaissance; merely tentative and experimental.

"*Reconnaissance.* * * * * (*Engin.*) An examination of a region as to its general natural features, preparatory to a more particular survey for the purposes of triangulation, or of determining the location of a public work."

Webster Dict.

It was not made for the purpose of settling any question involved in the present inquiry; and is entitled to no great consideration when we reflect on the extremely expeditious manner in which it was prepared. Emanating from the War Department, its pertinency to the business and exigencies of war is stamped on its face. Its relation is not to the demands or customs of peaceful commerce. Vessels of war have

undoubtedly ascended the Mississippi as far as St. Louis; but never except in high water; hence the map would necessarily indicate the preference for the wider channel at such a time; the only time eligible for them, that channel being in high water sufficiently deep, as well as shorter and more spacious.

Moreover, it was no part of the reconnaisance to ascertain the width of the river at different points; a task that would have required many thousands of triangulations; in short an accurate survey involving the labor of years. As to the width of the channels respectively that is the work of a draftsman; mere eye measure; and a mistake of half an inch under their scales would make a difference of 880 feet. To divest titles to land enjoyed without interruption for more than a half a century by treating such a screed as proof as strong as Holy Writ would be, we submit, hazardous and unjust in the last degree. If the War Department had made an accurate and a careful survey of the island and all of its surroundings, and had platted them in the most painstaking manner, the work would still be open to question; but when we have only a mere preparatory and preliminary sketch, made merely *ad informandum*, it would be alien to the intention of the War Department, and most unreasonable, to ascribe to it a position among the eternal verities. Even where the greatest skill is applied, errors in maps often baffle the labors of the historian and the geographer; and this is par-

ticularly true of maps like that in question, involving many elements of great complexity, and extending over vast regions of territory. The instructions do not accompany the map.

This case in this respect is like that of Missouri v. Kentucky, 11 Wallace, 395. The channel for navigation in that case, Wolf Island, originally lay east of the island, but a change in the channel had been effected by "gradual changes, caused in the basin of the Mississippi by the mighty rises to which the river is subject."

The report speaks of the witnesses for the defendant, Kentucky, "*many of them ancient,* including boatmen, navigators and several persons who had lived from childhood close by the island, *some opposite to it* (as Mrs. Burrus and her son in this case), and specially interested in their business to note on which side the vessels sailed, all testified that while now the main channel of the river was to be regarded on the east side of the island, it was undoubtedly, and, *within their memory and knowledge,* not so formerly, but was on the west side; many of these witnesses going into details, and *showing a positive and experimental knowledge on the subject upon which they spoke*; details *of that sort that could not easily be invented.*" (P. 398.)

It may be noted that in this case the testimony of living witnesses on the side of the plaintiff, Nestors of navigation, persons whose duty it was to take note

of the commerce of the channels, and an old lady living for a life time in sight of the eastern channel, and seeing boats passing before her door every day is not contradicted or impeached by a single witness.

Where is the force of the argument that the eastern channel could not be navigated when we have positive proof that it was constantly and habitually navigated down to 1882?

In the case of Missouri v. Kentucky, we learn that various old maps were relied on by Missouri. The court said:

"But it is said, the maps of the early explorers of the river, and the reports of travelers, prove the channel always to have been east of the island. The answer to this is, that evidence of this character is mere hearsay as to facts within the memory of witnesses, and if this consideration does not exclude all the books and maps since 1800, it certainly renders them of little value in the determination of the question in dispute. If such evidence differs from that of living witnesses, based on facts, the latter is to be preferred. Can there be a doubt that it would be wrong in principle, to dispossess a party of property on the mere statements —not sworn to—of travelers and explorers, when living witnessses, testifying under oath, and subject to cross-examination, and the physical facts of the case, contradict them?"

"But, it is claimed the books and maps which antedate human testimony, establish the right of Missouri to this island. If this be so, there is recent authority for saying they are unreliable."

The court did, however, find one reliable map, "based on actual survey and investigations." But that map could not be more trustworthy than the original survey made by Pelham, United States Surveyor, in 1846, approved by the General Land Office, and never questioned seriously by any one, until the defendants obtained their tax titles. It is not worth while to expend much time on the speculations of Mr. McAndrews. He testifies concerning the McRee map, certified by Binger Herman, Commissioner of the General Land Office, dated January 22, 1829, facing p. 170. There is nothing on that map to show the depth of water in either channel; yet the witness does not hesitate to state under oath that the map shows that the channel was west of the island in 1829. (P. 258.) He sees various curving banks that are nowhere indicated on the map; and says that "the contour of the Arkansas bank shows that the current did not affect it!"

Referring to the Pelham map of 1846, facing p. 172, he asserts that the surveyor intended by it to assert that the island was then in the State of Mississippi, basing his conclusion on the fact that the words "Mississippi River" and the arrows placed in the wider space of the western channel, though the map itself shows that

it was included in the Arkansas Survey, the field notes expressly stating that fact also. (P. 173.). On the other hand it will be noticed that on the "Choctaw" or Mississippi survey of 1830, facing p. 176, relied on by defendants, the same words and the arrow are placed on the east side of the island. This witness, though he states the distances across the east channel positively from the map, says:

"The points at the foot of the island and at the head of the island, and corresponding points on the Mississippi shore, were carefully measured by triangulation, and the curve of Mississippi was then sketched in; then the surveyor *estimated* from the bank, so *fixed the width of the channel by eye measurement, and* sketched in the other *bank to correspond with that*— the bank already fixed." (Pp. 259, 278.)

Then the witness objects that the eastern channel is too wide at the upper end, contending that it would take in more water than could get through. (P. 262.) And as to the accuracy of his calculations note what he says on p. 268. He admits that where the channel is narrow the river scours and makes it deeper. (P. 270.) He admits that the "Choctaw" or Griffin map of 1830, facing p. 176, represents the river as being east of the island. (P. 271.) He also says that there is nothing on the "Choctaw" map, facing p. 176, to show the distance across the eastern channel. (P. 274). He explains why the whole of T. 21, R. 8 W., was not included in the Choctaw map, facing p. 176, by saying that the sur-

veyor forgot the island! (P. 276.) If the surveyor, he says, had made any measurements of the eastern channel, the map would have shown them. (P. 277.) The witness says that he knows nothing of these matters save from the maps presented. (Pp. 271, 279, 267.) The witness says that he was first "interviewed" concerning these matters by defendant, Q. J. McGuire about a year before his deposition was taken. (P. 282.) But he had made no study or investigation of this matter until the evening before and that morning. (P. 283.) And that he had given about an hour and a half to the subject, (P. 280.) For the rest and for many other changes and mistakes of this witness we must refer to the deposition of Mr. Le Vasseur, an engineer of the highest standing.

The lands in controversy were sold for taxes in Arkansas in October, 1883. (P. 30.) But it must not be inferred that taxes had not been for many years paid on them. Taxes in that State, as elsewhere, are assessed annually. Kirby's Dig. St., Sec. 7017. And if they are not paid at the proper time the lands are put up and sold. The amount of taxes for which these lands were sold to Mrs. Murphy in October, 1883, was only $88.54 (p. 30); thus showing that the delinquency could only have been for one or two years. Mrs. Murphy sold them to the plaintiffs in August, 1898, for $2,800. (P. 33.)

As to the letter of W. G. Ford and A. Downing (pp. 68, 70), they are not evidence of anything, being hearsay, pure and simple. The writers were merely private citizens; and it is not even proved that they ever wrote the letters.

John Wilson, Commissioner of the General Land Office, wrote Feb. 28, 1885, to Jacob Thompson, Secretary of the Interior: "I am of opinion *from the inspection of the plats* that the island in question belongs to the jurisdiction of Mississippi, and should not have been returned and surveyed as lying in the State of Arkansas;" but he qualifies this statement by saying that if it could be shown that the channel was east of the island when Mississippi was admitted into the Union *and so remained* until Arkansas was admitted in 1836, the island would belong to the latter. But if in 1817 the middle of the main channel was east of the island, and in 1836 it was west of the island, the lands would not belong to either State. (P. 69.)

As we perceive, the maps are purely land maps, and show nothing about the channel.

Yet Mr. Hendricks in his letter to Gov. McWillie of July 23, 1859, says: "I am of the opinion *from the inspection of the plats* that the island in question belongs to the jurisdiction of Mississippi, and should not have been surveyed and returned as lying in the State of Arkansas," copying this phrase from Wilson's letter. (P. 70.)

Neither of these officers imagined that they had any power to annul the patents previously issued; but Mr. Hendricks told his correspondent how indemnity could be obtained if the patents had wrongfully issued. (P. 71.)

On June 27, 1896, Mr. E. F. Best, Acting Commissioner of the General Land Office, writes to the Register and Receiver of the United States Land Office at Jackson, Miss., and follows suit, saying: *"The plat* of each survey shows the main channel of the river to be west of the island; and consequently the island is in Mississippi!" (P. 71.)

It is impossible not to see that these officials were under the impression that the State line followed the wider channel without regard to any other consideration. But whatever they thought or said is not of the slightest importance so far as this controversy is concerned, since they could not set aside patents previously issued.

At the close of his letter Mr. Best requests the Register and Receiver to advise the Governor of his views, and to allow him 60 days within which to object. (P. 72.)

And there the matter dropped; and has never been taken up again.

Objection was made to the introduction of these letters. (P. 83.) Though, of course, such objection was

not necessary. However, the court below based its judgment partly on this epistle of A. Downing. (P. 93.) If that letter of Downing—if it is his letter—is admissible in the courts, then all his letters must be equally so, having also the unusual quality of proving themselves. But the letter is mere waste paper, as the writer does not pretend to know anything about the facts, but had never heard of a steamboat going down the eastern channel. Then he says that he had "been told" so and so. The administration of justice is ticklish enough and hazardous enough without basing its judgments on such rubbish as this. The fact that Mr. Downing had never heard that a steamboat had gone down the eastern channel proves nothing. He had probably never heard of one going down the western channel.

McAndrews infers from the fact that the land on the bank of a river is usually higher than the land farther back indicates that the main current was on the west side of the island. (P. 258.)

It is a well known fact that the banks of rivers running through alluvial lands are usually higher than the lands lying farther from the stream; and the cause of this phenomenon is simple.

"If, however, rivers which are subject to high floods, such as the Nile, the Po and the Mississippi, are, during inundations, higher in level than the plains by the river side, this fact is owing to the lining of alluvion which

is gradually formed on the banks. During the period of flood the waters which pour over the banks are retarded by a thousand various obstacles—trunks of trees, bunches of plants, mounds, palisades, buildings—and consequently they deposit on the ground much of the sediment which they contain—before they leave the banks and flow far and wide into the plains they are comparatively purified."

Elisee Reclus, La Terre, ch. LIII.

According to the testimony of witness McAndrews no steamer—perhaps no watercraft—could ever have gone down the eastern channel; but the evidence of living witnesses wholly unnimpeached proves that they did habitually do so from times remote; and the court below so found. In order farther to prove this fact the witness relies solely on two maps made without any thought or reference to hydrography. By exercise of his obliterating faculties, by piling presumption on inference, by devious mental processes, and by intellectual triangulation, it might be proved by larger generalizations that the Mississippi river never had any real existence. It is manifest that he had received his cue from the Downing letter.

We need not be surprised to learn that the witness has gone to the Philippines, where he will find many islands and a larger sphere for his activities. (P. 187.)

The only criticism of the testimony introduced for

the plaintiffs has been that some of the most material of them were old when their depositions were taken; and that their memories had lost retentiveness.

In some cases this criticism would be eminently just; as for instance, in cases where aged witnesses testify as to casual matters that are easily forgotten. No doubt memory is one of the first faculties of the mind to decay. Nature does not care to replenish flames that must soon be extinguished. But old men usually remember events that occurred in childhood, youth, or early manhood better than those of later years, both because early impressions are usually the deepest, and because they are the most often recalled in later life. There are other continuous matters of routine running through a long series of years, concerning which the memory is constantly refreshed, which can never grow dim or be forgotten until the last semblance of mental activity has faded out. Even Falstaff, after a long life of dissipation, in dying "babbled of green fields," such as he had frequented in boyhood.

Of the witnesses for the plaintiffs, Marshall J. Miller, pilot and commander of vessels, was at the time of taking his testimony, nearly 78 years old. (P. 111.)

Thomas A. Wilcox, of the same calling, was 72 years old. (P. 116.)

A. E. Drinkwater, same profession, was 62 years old. (P. 119.)

Mrs. Burrus was 79 years old. (P. 188.)

To say that pilots who have passed their whole lives in running their vessels on the Mississippi river hundreds, if not thousands, of voyages, in all kinds of weather, and all seasons of the year, in the darkest nights, when the ordinary passenger could not see his hand before his face, and before searchlights were invented, threading the narrowest channels, avoiding every treacherous sandbar, every snag, with apparently the accuracy of instinct, could not remember on which side of a prominent island vessels usually passed is to express a paradox that transends the utmost bounds of human credulity.

To say that Mrs. Burrus living in sight of the eastern channel, and seeing boats passing and repassing during more than an average life time, continually hearing their bells and whistles, both in the day time and by night, could not remember these countless processions is equally incredible.

If any one of these witnesses had been in such a state of decrepitude as to render his or her testimony of little or no value, that fact could easily have been shown; but the courts cannot stigmatize a whole class of the wisest and best men and women in every community by announcing that they are untrustworthy, because of advancing age; and yet the court below refer to the deposition of Capt. Miller disparagingly, expressly because

he was seventy-nine years old, saying that "he might easily have been mistaken as to what his father told him." (P. 93.) This relates to what his father impressed on him in his youth when he was learning the business of running the mighty and dangerous river; the last thing perhaps that one would forget. And then the court added:

"It is *easily conceivable* that, his father having told him that this was the channel, and being aware of the fact that his father had navigated the river ever since 1812, he concluded that his father meant that the channel had been east of the island ever since he had navigated the river."

Yes; almost anything is *conceivable* to a person of vivid imagination. It is *conceivable* that Capt. Miller's father died before he was born; but the evidence is the other way; and we submit that where a witness is wholly unimpeached, and his testimony is clear and credible, the courts have no authority to disregard it, to put words in his mouth that he never uttered, and to base their judgments on mere travesties. Capt. Miller no doubt knew what he was talking about; his language is not in the slightest degree ambiguous; and perhaps nothing would naturally be more apt to be remembered.

Whatever the qualities of old age may seem to men of a younger generation, there appears to be no ground for saying or implying that old men and women are

less truthful than men of fewer years. The decay of the powers of fancy and imagination, the decline of the passions, the gradual detachment from material interests, and a solemn sense of impending dissolution, would seem to tend very forcibly in the other direction.

It is certainly not improbable that Capt. Miller's father told him what he is alleged to have told him, nor that it was true. What inducement to falsehood could there be? We have proof that cannot be questioned that as far back as 1838 and down to 1882 the eastern channel was the main channel for navigation; and it is not denied that the channel *changed* about the latter year as the result of a great cataclysm that wholly washed away the town of Napoleon at the mouth of the Arkansas river, and destroyed the plantation and houses on the Arkansas side of the river, throwing up a bar that choked the east channel. The evidence also undeniably shows that in making this change the river did not return to the old channel, but made a new one a mile or a mile and a half west of the former channel.

There is not a living witness for defendants that pretends to deny these facts, or to assert that the western channel was the main channel prior to 1882. It is not, then in the least degree surprising that the eastern channel should have been the main channel in 1812. The presumption would certainly be that way; and, as we shall show presently, the burden of proof on this

point is not on the plaintiffs, but on the defendants; a burden which they cannot evade, and which they have failed to lift. There is not a syllable of evidence to prove that the western channel was the main channel prior to 1882, only 17 years before the bringing of this suit, or that any boat ever tried to pass the eastern channel and failed, or was ever wrecked there. But then there is the Downing letter!

The court below in its opinion refer to the facts as stated in Missouri v. Kentucky, 11 Wall., 403, 404, adding: "This remark applies with great force to the testimony in this case."

We confess that we are not able to see the application. The extract from the opinion in the Missouri case demonstrates that the present case is materially unlike that. In that case none of the witnesses, as stated by the court, "ever made a personal examination of the channels and surrounding objects at this point," and that none of them except *may be* of one of them, ever lived in the vicinity of the island, or remained there any length of time, and that all the knowledge any of them acquired of the state of the river was obtained by passing up and down it at different times either on flat boats or steamboats.* * * And passing the river *only occasionally, and without any knowledge of where the volume of water flowed when the river was low,* they would naturally conclude it was the main channel."

This applies very well to Downing.

The evidence in that case was not only vague and insufficient; that of passengers on boats, not interested in matters of navigation, leaving such things to the commanders and pilots of the vessels to whose keeping, for the time being, they had entrusted themselves.

There is no "maybe" about the residence of Mrs. Burrus and her son and several other witnesses; and we have the testimony of life-long pilots on the river, to whom their knowledge of the channels supplied their only means of livelihood, and to whom the channels were as familiar as the English alphabet is to your honors on the bench. They had studied the "Pilots' Guide," and had such an experimental and practical knowledge of the subject as no other class of men could ever possibly possess. Besides we have the testimony of other witnesses, neither impeached, impugned or contradicted, who had intimate knowledge of the facts to which they testified. The fancied resemblance between the facts of these two cases recalls the anecdote of the widow who said to a gentleman, "You so remind me of my dear late husband." "In what respect?" he asked. "Because," she answered, "You are so unlike him."

Some parts of the testimony must have been undecisive in the mind of the court below, because in the opinion it is given out that "the evidence is very unsatis-

factory." But not on the question as to the fact that the main channel was on the east side of the island from a time prior to 1839 until 1882, that is, as long as any one can remember, because, as stated in the opinion of the court below, the evidence *conclusively* establishes that fact. (P. 93.)

The evidence then that was "very unsatisfactory," could only be that of the defendants regarding an ancient main navigable channel, a kind of lost Atlantis, of which no memorial is left. When it was formed no one knows. The shape, depth and physical conditions are lost in the midnight of legend and fable.

Steamboats, we are told, first made their appearance on the Mississippi river in 1811, only five years before the State of Misissippi was admitted into the Union. They must have been small, and few in number during some years following. There is no evidence that during that time any vessel ever went west of the island; or even one of the flat boats, the usual vessels of transportation and commerce of that day. Absolute and impenetrable darkness reigns here. All is purely matter of hopeless conjecture. Any one who has read a life of Mr. Lincoln, or the "Winning of the West," by Mr. Roosevelt, will have learned that in 1817 nearly all the commerce on the Mississippi was carried on by means of flat boats; and we have not the slightest hint to show on which side of Island 76 they pursued their perilous way.

Well might the court below say that the evidence on this branch of the case was "*very* unsatisfactory." (P. 93.)

It is very well said in the opinion of the court below that "the main channel of a river having been once established by proper proof, the presumption, in the absence to the contrary, will be that it was there before that time, and remained there since. Thus, it it being established conclusively, as found by the court, that the main channel of the river was east of this island in 1839, the presumption, in the absence of proof to the contrary, is that it was there before that time, even as early as 1802, "when the State of Georgia ceded the territory to the Government for the purpose of creating the State of Mississippi." (P. 94.)

But the opinion states that in 1846, when "the undisputed evidence shows that the channel had for several years changed to the east of the island." etc. (P. 96.)

We submit that the evidence does not show anything of the kind, either directly or indirectly; and that this is purely an inadvertent recital. There is no evidence that the channel was ever west of the island prior to about 1882.

The opinion below says very correctly:

"The 51 acres not sold by the Government (entered at Helena) were in 1859 patented to the State of Arkansas under the Swamp Land Act of September 28,

1850. The lands on the island were selected by the State of Mississippi under the Swamp Land Grant Act of 1850 on June 12, 1852, and approved as such on September 24, 1854. In 1854, before any patents to the lands had been issued by the National Government, the State of Mississippi sold these lands to W. G. Ford; *but as the lands had been sold by the Government through the Arkansas Land Office in* 1847, *no patent therefor was ever issued to the State of Mississippi, the Act of* 1850 *granting to the State only the unsold lands.*" (P. 97.)

It is clear then that the State of Mississippi never got or ever can get any title to these lands.

But the opinion then lays stress on the fact that the land on the west side of the island is higher than that on the east side; inferring that this circumstance indicates the deeper channel. This is a new principle in the law of real estate, the fallacy of which we have already exposed. "This," the opinion states, "is owing to the fact that the annual overflows of the river leave most of the sediment on the bank nearest the main channel." There is nothing to sustain the singular assumption thus made. During an overflow the water is generally of uniform turbidness; and the deposit on the bank depends on the obstructions encountered, and on eddies where the water is less violently agitated. It is manifestly impossible to judge of the depth of a stream either by its breadth or by the height of its banks.

The next assumption in the opinion is as follows:

"—As the timber cut in those days was used almost exclusively to supply steamboats with fuel, it was naturally cut near the channel which steamboats used in navigating the river, and clearings were made nearest to the boat landings, in order to enable the parties easy access to the boats, which at that time were the only means of conveyance for freights and passengers." (P. 98.)

But Miller says: "The plantations were opened by woodyards selling wood to steamers." (P. 115.) There was no plantation on the island.

The first steamboat that navigated the Mississippi was constructed at Pittsburg in 1811.

XV. Enc. American, tit. *Steam Vessels.*

They were of a different form and construction from those used on the eastern waters; and, considering the less rapid processes of those days in manufacturing such complex structures, it is hardly probable that there were many vessels of that kind on the river in 1817; and they could not have speedily superseded the flotilla of flat boats that had long monopolized the river trade; indeed they are not entirely superseded yet. In 1810 the population of the Territory of Mississippi was 40,352; in 1820 the population of the State was 75,448.

Id. tit. *Mississippi.*

The first settlers in all new countries make their homes on the sea shore, or on the great rivers, partly for

the purpose of easy communication with the ouside world. It was so in New England, in Virginia, on the Ohio, on the Thames, on the Tiber, on the Nile, on the Mississippi. The earliest traces of our antediluvian ancestors are to be found along the shores of rivers. "The timber cut in those days" was not "used almost exclusively to supply steamboats with fuel." Men were, as elsewhere under like circumstances, clearing their farms, building fences, and houses. In 1839 there was a plantation and woodyard opposite the island, Called Neblee's Landing, and one on the Arkansas shore at Rouse's Point. To suppose that the whole of the population of Mississippi in 1817 had little or no other business or employment save that of supplying the few steamboats on the river with fuel is an athletic leap in the dark. Besides it does not appear that there was any landing on Island 76, or that any steamboat ever landed there until after it was purchased by the plaintiffs. There was nothing to land there for; and the great American forest, almost unbroken, lined the river on either bank. The United States survey of 1846, facing p. 172, shows four small clearings on the western margin of the island. They are all in nearly rectangular shape, showing that they were not made by wood butchers engaged merely in supplying fuel to steamboats. There were a few inhabitants on the island when the United States Survey was made in 1846; for the field notes state that "the inhabitants of said island

vote and pay taxes in the State of Arkansas." Communication with the mainland in Arkansas was not then very difficult. The field notes say of the western channel, "Distance across obtained by calculation. This channel is wide, but in low water it is very shallow. When I passed down December 27, 1845, it was with difficulty I could get my skiff through this channel." (P. 173.) And cattle, horses and mules frequently crossed the western channel in low water. (P. 119.)

The court admit that Arkansas continuously claimed and exercised control over the island ever since 1838. (P. 108.) That is, during a period of sixty-one years.

The court finally placed its decision on the Downing letter, which is as rank a piece of hearsay as was ever presented in a court of justice. (P. 104.) Not only was it hearsay, but the writer states that he speaks solely from hearsay. He did not pretend to know anything about the matter of which he wrote, and thought that the lands were patented in 1830 or 1831. The excuse for giving desisive weight to this letter is that Downing had been *"at one time* the Surveyor General of Public Lands for the State of Mississippi!"

By final decree the court dismissed the bill for want of jurisdiction. (P. 87.) The trial judge also granted a certificate that no other question than that

of jurisdiction was passed upon or determined by the court. (P. 87.)

IV.

JURISDICTION.

The ground for jurisdiction are two fold.

1. The boundaries between the states are fixed by the acts of Congress by which they are created; hence this controversy directly raises a federal question.

U. S. v. Texas, 143 U. S., 641.

Wilcox v. Jackson, 13 Pet., 498, 518.

Shively v. Bowlby, 152 U. S., 1, 9.

Packer v. Bird, 137 *id.*, 661.

Paulet v. Clark, 9 Cranch, 292.

Colson v. Lewis, 2 Wheat,, 377.

Hardin v. Jordan, 140 U. S., 371.

Tennessee v. Davis, 100 *id.*, 258.

If a writ of error will lie to the court of last resort of a State it follows that the suit might originally have been brought in the federal courts. It is clear enough that the state courts could not enforce any decree that they might render in a case of this sort.

Diverse citizenship is not essential to jurisdiction where the parties claim lands under grants of different States.

Paulet v. Clark, *supra.*

Colson v. Lewis, *supra.*

2. The suit is also brought to quiet the title of

the plaintiffs; and as the lands lie within the district of the court below that court had jurisdiction on that ground irrespective of citizenship.

Rev. Stat., Sec. 738.

Dick v. Foraker, 155 U. S., 404.

In this case the defendants filed an answer, entered their appearance, and specially waived objections to the jurisdiction. (Tr., p. 84.)

As to the jurisdiction to quiet title, see also

Carroll v. Safford, 3 How., 441, 514.

The court below considered the answer as being only a special plea to the jurisdiction; but this, we think, was error. Defendants having voluntarily submitted to the jurisdiction of the court, it had the right to decide the case on the merits.

Blodgett, D. J., in Remer v. Mackay.

35 Fed., 86.

3 Pom. Eq., Sec. 1318.

The court below acquired jurisdiction by the seizure of the lands.

Cooper v. Reynolds, 10 Wall., 317.

Shields v. Coleman, 157 U. S., 178.

Pennoyer v. Neff, 95 *id.*, 714.

Also by personal appearance.

As the court had jurisdiction of the cause it had jurisdiction to decide it.

Windsor v. McVeigh, 93 U. S., 274.

Arndt v. Griggs, 134 *id.*, 320.

V.

BOUNDARIES.

We are satisfied that the boundary line between the States is the thread of the Mississippi River. If the western boundary of the Mississippi was at the time of her admission into the Union the eastern shore of the river, as the act of admission would seem to have intended, the act of admission of Arkansas, making her eastern line the thread of the river, had the effect to amend the former act so as to make the line identical for both States. "Where territories are co-terminous they must have a common boundary."

Coffee v. Groover, 123 U. S., 22.

This line is not changed by any later displacements of the main navigable channel of the river.

Missouri v. Nebraska, 19 U. S., 23.

Nebraska v. Iowa, 143 *id.*, 360.

Indiana v. Kentucky, 136 *id.*, 508.

VI.

LAW AS TO EVIDENCE.

In considering the evidence to the effect that from 1838 to 1882 boats went down the west channel in high water, it should be borne in mind that the range between high and low water at Memphis is 40 feet.

16 Enc. Britannica, p. 519.

Mr. Levasseur, however, gives the range as 39 feet.

Both are approximate; and the difference is of no importance. With such a tremendous flood boats could go over the banks, and in many cases over the tree tops.

Burden of Proof.

The answer in this case, though negative in form, is affirmative in substance, since it sets up a hostile claim. The plaintiffs are, in reality on the defensive, because defendants knew when they forcibly invaded the island that the effect would be to render it unsalable, leaving the plaintiffs no choice but to bring suit or abandon it.

Sharon v. Tucker, 144 U. S., 543.

Previous quiet and peaceable possession by the plaintiffs being "*prima facie* evidence of title, threw the burden upon the defendants of establishing the contrary."

Shulenberg v. Harriman, 21 Wall., 59.

Teall v. Shroder, 158 U. S., 179.

A most fundamental error in the decree below, and one that is obvious from a mere reading of the opinion, regards the burden of proof. The court treated the case as if the burden of proof rested on the plaintiffs to disprove all the allegeations of the defendants. But the production of the patents by the plaintiffs shifted the burden of proof to the defendants.

Texas Ry. v. Smith, 159 U. S., 68.

Hoofnagle v. Anderson, 7 Wheat., 217.

Hendry v. Willis, 33 Ark., 833.

Holland v. Moon, 39 *id.*, 121.

Dawson v. Purham, 55 *id.*, 290.

Boynton v. Ashabrunner, 75 *id.*, 419.

When the court announced that the evidence was "very unsatisfactory," the inevitable legal conclusion was that the decree should be for the plaintiffs; and a decree for the defendants on vague and uncertain evidence was a complete *non-sequitur*.

The bill waived an answer under oath (p. 12), and the answer was not sworn to. (P. 44.)

Tradition as evidence.

The general and controlling rule is that the best evidence existing must be produced. Owing to the immense lapse of time, no evidence can be adduced to show positively where the main channel of the river was in 1817. The reconnaisance of 1821 does not show it. It is four years after the admission of Mississippi, and there is nothing to indicate that it was intended to show the main navigable channel for commercial purposes.

The witness Captain Marshall J. Miller says that his father told him in his youth about the channel of the river as early as 1802 and continuously afterward. (P. 115.)

As the evidence of tradition may be objected to, we may inquire as to its admissibility.

This case very forcibly illustrates the necessity of admitting evidence of that kind in suits like the present.

There is no one living now who knows personally where the main channel of the river at Island 76 was in 1817. It is equally impossible to establish the fact by general reputation, which has passed away with the generation that formed it. Nothing, then, is left but tradition; and that is the best evidence because it is the only evidence. In this case we believe that it has every mark of credibility; for certainly an old pilot engaged in teaching his trade to his son would be very apt to impart all the information that he had acquired of the intricacy and perils of the river with repetition and insistence. It would be extremely strange if he had not done so. As to Captain Miller he appears to be quite above reproach; and he could have no interest in misstating the facts.

Fortunately the law on the subject is well settled.

We beg leave to invite the attention of the court to the learned opinion of Mr. J. Story in Ellicott v. Pearl, 10 Pet., 435, from which it appears that Lord Kenyon held that in controversies of a public nature tradition and reputation are admissible. Lord Ellenborough

could not understand it, but admitted that such was the law.

Finally Mr. J. Story said:

"And, indeed, the distinction seems now clearly established in England that hearsay or tradition is not admissible in cases of mere private rights; but only in cases of public rights, or those *quasi publici,* involving similar interests by a number of persons.

He adds:

"It is upon the ground of this same distinction that general reputation is admitted in England in cases of disputed boundaries between parishes and manors, because the right affects many persons, and is of public notoriety and interest to all the inhabitants of the parish or manor. (P. 436.)

The established rule was stated to be as follows: "First that the fact to which the reputation or tradition applies must be of a public nature." (P. 437.)

Certainly the present case involves a public interest to a much greater extent than that arising from a dispute as to boundaries between parishes and manors, since every taxpayer in the two States now and for all time is and will be interested in the decision now to be made.

The claim now in suit has been delayed by the defendants and by their predecessors until it cannot be satisfactorily settled either by old maps or by surveys.

We cannot prove a reputation among the dead; and the only evidence possible is that of tradition; which comes to us in this case in a very credible form.

Since the decision in the Ellicott case evidence of tradition in cases of this sort has been almost universally admitted in this country. See the many cases cited in 2 Wigmore's Evidence, Sec. 1564.

Defendants have no tradition to offer. If tradition is not admissible it may in the end be quite as well for us, as it will certainly show that the claim now advanced is so exceedingly ancient that in the very nature of human vicissitudes it cannot be proved or disproved at all; and surely where such is the case, the decision cannot be in favor of the party who has caused the delay, and whose evidence is "very unsatisfactory." In such case the party in possession has the better right.

We think, however, that evidence of tradition is admissible in cases of this kind. "Repute," "reputation" and "tradition" seem to be used convertibly in this kind of case.

28 Enc. Law, 2 Ed., 443, note 7.

See also

1 Elliott Ev., Secs. 402-3.

"Courts have always been liberal in receiving evidence with regard to boundaries which would not be strictly competent in the establishment of other facts. Old surveys, perambulations of boundaries, even repu-

tation, are constantly received on the question of boundaries of large tracts of land."

Ayers v. Watson, 137 U. S., 596.

Orton v. Smith, 18 How., 266.

Hart v. Sansom, 110 U. S., 155.

Boardman v. Reed, 6 Pet. 341.

Beard v. Talbott, Cook (Tenn.) (Cooper's Ed.), top p. 142.

On the whole testimony the court below found "that the evidence *conclusively* establishes the fact that ever since 1839, and probably two or three years before that time, up to the year 1881, the main channel was *east* of the island." (P. 93.)

What is the old reconnaisance or sketch of 1821, on which defendants place their whole reliance, but a tradition?

"*Reconnaisance n.* Preliminary survey, rough sketch."

Soule's Snonyms.

Rough enough, indeed; made almost "while you wait," covering thousands of miles of winding rivers.

The tradition as to the physical use made of a river by pilots at a particular point handed down from father to son in the course of professional training is certainly quite as trustworthy as that of a sketch, selected from a lot of such, which shows that it was only intended as something temporary and provisional.

True, the old pilot, long since dead, was not sworn; but neither were the authors of this sketch long since dead also.

"But it is claimed the books and maps which antedate human testimony establish the right of Missouri to the island. If this be so, there is recent authority for saying they are unreliable."

Missouri v. Kentucky, 11 Wall., 410.

In Clement v. Packer, 125 U. S., 321, the court said:

"In Mima Queen v. Hepburn, 7 Cranch, 290, 296, Chief Justice Marshall says: 'To this rule there are some exceptions which are said to be as old as the rule itself. These are cases of pedigree, of prescription, of custom, and in some cases of boundary. * * * Also matters of general and public history.'

"Upon the subject of boundary there is a general agreement that by the English rule, evidence of the declarations of deceased persons as to the boundary of parishes, manors, and the like, which are of public interest, is admissible, but that such evidence is inadmissible for the purpose of proving the boundary of a private estate, *unless such boundary is identical with another of public interest.* In many of the States this strict rule has been extended, and these declarations have been admitted to prove the boundaries of lands of private persons. This extension of the rule has, we

think, been sustained by the weight of authority in the American state courts, as justified upon grounds as strong as those on which the original rule rests."

VII.

THE SURVEY.

In Baxter v. Ry., 1 Black, 208, the court said:

"It is immaterial where the most usual mouth of the river was in 1821, nor whether this northern mouth was occasional, or the flow of water only temporary at particular times, and the flow produced to some extent by artificial means, by a cut through the bar, leaving the water to wash out an enlarged channel in seasons of freshets. The public had the option to declare the true mouth of the river for the purposes of a survey and sale of the public land."

The court had previously said in the same opinion:

"The mouth of the river being found, establishes the southeast corner of the tract. The plat of the survey, and a call for the mouth of the river in the field notes show that the survey made in 1821 recognized the entry of the river into the lake through the sandbar in an almost direct line easterly, disregarding the channel west of the sandbar, where the river most usually flowed before the piers were erected."

A second survey of land "cannot affect the title of

the complainant as acquired from the United States under the antecedent official survey and sale."

Ry. v. Shurmeir, 7 Wall., 289.

Lindsay v. Hawes, 2 Black, 560.

McMichael v. Murphy, 197 U. S. 304.

In Horne v. Smith, 159 U. S., 40, the survey called for a corner on the "Indian River." It was held that the survey only extended to a parallel bayou, and that evidence was not admissible to show the contrary.

See also

Chapman v. Polak, 11 Pac., 768.

Shurmeir v. Ry., 10 Minn., 82, 88 Am. Dec. 59.

The field notes of the survey are admissible in evidence.

Heath v. Wallace, 138 U. S., 583.

"Because he (the Register) is directed by law to offer the lands, when sold at public sale, in half-quarter sections. To enable him to perform this duty he must know what a half quarter section is. And before he can offer a fractional section for sale, he must see that it has been subdivided, so as to enable him to offer as much of it in half quarter sections as practicable."

Brown v. Clements, 3 How., 664.

If the law were otherwise, then.

"The patent would fail to be, as it was intended it should be, an instrument of quiet and security to its possessor. The patentee would find his title recognized

in one suit and rejected in another; and, if his title were maintained, he would find his land located in as many different places as the various prejudices, interests or notions of justice of witnesses and jurymen might suggest."

Beard v. Federy, 3 Wall., 492.

"And in the nature of things a survey made by the government must be held conclusive against any collateral attack in controversies between individuals. There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys; and no other tribunal is so competent to deal with the matter as the Land Department. None other is named in the statutes. If in every controversy between neighbors the accuracy of a survey made by the government were open to question, interminable confusion would ensue."

Russell v. Land Grant Co., 158 U. S., 258.

As a deposition the survey "presents the facts in a more satisfactory manner than could be done by the opinion of witnesses. It makes certain that which before rested on opinion."

Garnett v. Jenkins, 8 Pet., 86.

In making the government survey Pelham must have been on the island and vicinity for some time; and there were many people then living thereabout and navigating the waters who knew whether the commercial channel had changed since 1817. He is presumed to have

known the law; and in point of fact he did know the law. Within his own special domain he knew it better than did John Wilson or Thomas A. Hendricks, successively Commissioners of the General Land Office, who both supposed that the State line followed the widest channel without regard to depth or navigability, and that it could be definitely ascertained by merely looking at a map. (Pp. 69, 70.)

VIII.

THE PATENTS.

The effect and construction of a United States land patent must, in the very nature of the subject, be a question for the United States courts to determine for themselves, without reference to the rules of construction adopted by the States for their grants.

Lurton, C. J., in Scranton v. Wheeler,
57 Fed., 811.

The question as to boundaries between the States is not governed by the local law.

Martin v. Waddell, 16 Pet., 367.

The decision of the Land Department that lands are Swamp and Overflowed Lands is final and conclusive.

Rogers Locomotive Works v. Emigrant Co.,
164 U. S., 560.

Heath v. Wallace, 138 *id.*, 573.

Wright v. Rosebery, 121 *id.*, 509.

The only difference is that in those cases the Land Department must pass on the question of the locality of the water lying on land horizontally, while in the present case it must pass on water lying vertically, and assuming the shape of a river.

The same rule of conclusiveness applies to the judgment of the Land Department as to mineral lands.

Burden v. Northern Pac. Ry., 154 *id.*, 329.

And so of pre-emption or homestead rights.

Moran v. Horsky, 178 U. S., 211.

And as to missionary stations.

Bishop of Nesqually v. Gibbon, 158 *id.*, 166.

And so as to occupation and settlement.

Dow v. Bowman, 176 U. S., 413.

And as to boundaries of a land grant.

Gardner v. Bonestell, 180 *id.*, 362.

"The adjustment of these claims, and their definition by the prescribed surveys and plats, establishing them in their appropriate locations within the limits of the original grant, *and all questions of possession, of boundary,* and of conflict, constitute a part of the administration of the law confided to that branch of the Executive Department."

Craig v. Leitensdorfer, 123 *id.*, 205.

A patent is the highest evidence of title, and is conclusive as against the government, and all claiming under junior patents or titles until it is set aside or

annulled by some judicial tribunal in a direct proceeding for that purpose.

Moore v. Robins, 96 U. S., 533.

With the patent passes away all authority or control of the executive department over the land, and over the title which it has conveyed.

Id.

Noble v. Union River Logging Ry., 147 *id.*, 175.

Hardin v. Jordan, 140 *id.*, 400.

It follows that the letters of the United States Land Officers embraced in the transcript are wholly irrelevant, except as showing that the State of Mississippi years ago, was fully advised of the situation from a legal point of view, as affecting the questions of acquiescence and prescription.

The cases holding that in the absence of fraud or mistake the decisions of the land officers in issuing a patent, being quasi udicial, are conclusive, are exceedingly numerous.

U. S. v. Minor, 114 U. S., 243.

Calhoun v. Violet, 173 U. S., 63.

School of Magnetic Healing v. McAnnulty, 187 *id.*, 94.

DeCambra v. Rogers, 189 *id.*, 122.

Bates Co. v. Payne, 194 *id.*, 108.

Cragin v. Powell, 128 *id.*, 698.

Otherwise the confusion and uncertainty of titles and possession would be infinite.

U. S. v. Arredondo, 6 Pet. 727.

Other citations are unnecessary.

"The principle is well settled * * * that a patent is unassailable by any title commenced after its emanation."

Hoofnagle v. Anderson, 7 Wheat., 217.

The title of the plaintiffs rests on the patents of 1848, the defendants' claim originated in the tax sale of August 10. 1899.

A patentee may be held to be a trustee for an adverse claimant on the ground of fraud and mistake. Fraud must be distinctly charged, and the facts and circumstances constituting the fraud, must be specifically set out.

Moore v. Green, 19 How., 72.

Lalone v. U. S., 164 U. S., 25.

Fraud must be clearly proved, and it is not sufficient to prove it by a preponderance of evidence.

Id.

When it is alleged that fraud has been used in the issue or obtaining of a patent the facts "must be clearly established by evidence entirely satisfactory to the court."

U. S. v. Silver Mining Co., 128 U. S., 676.

The same rules apply of course to the law of mistake. To correct any written instrument the evidence

must be clear; and particularly where the result may affect the rights of an innocent purchaser.

The defendants are estopped from attacking either the survey or the patents.

More v. Steinbach, 127 U. S., 83.

Doe v. Wilson, 23 How., 458.

Any objection to the decisions of the Land Department must be sustained in "the most clear and decided manner."

Maxwell Land Grant Case, 121 U. S., 380, 381.

U. S. v. San Jacinto Tin Co., 125 *id.*, 300.

U. S. v. Budd, 144 *id.*, 154.

It is not sufficient to allege that the plaintiff has no title.

Quinby v. Conlan, 104 *id.*, 426.

Or that the Land Officers were in error in adjudging the title to the patentee.

Bohall v. Dilla, 114 *id.*, 47.

Burfenning v. Ry., 163 *id.*, 321.

Shepley v. Cowan, 91 *id.*, 330.

2 Pom. Eq., Sec. 776.

Entries on public lands after the issue of a patent are inadmissible.

Stringer v. Young, 3 Pet., 337.

Does the principle apply to the present case? We think so. We amit that if lands lying in Michigan were entered in a land office in Arkansas, and a patent should issue on such an entry, the patent would be void. But

that is not this case. Here was a real question to be decided. A survey that did not show the boundaries of sections and townships bordering on the State lines, with their contents, would have been so imperfect that it could not have been approved. There is no more authority for rejecting the exterior lines of a survey than there is for rejecting the interior lines. Indeed the permanency and notoriety of a State line are of far more importance than any others.

"Sec. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require."

Rev. St., U. S.

Not only must the boundaries of each section, half section, and quarter section be shown, but also the contents of each.

Id., Sec. 2396.

And so the description of the lands contained in the patent is conclusive.

Doe v. Wilson, 23 How., 457, 463.

Crews v. Burcham, 1 Black, 367.

The ascertainment of the boundaries of the State was an indispensable part of the surveys; and no one except the Public Surveyor could perform that important service. In doing so he was acting as much in a *quasi* judicial capacity as when meandering lakes, or performing any other duty.

The rule as to conclusiveness applies also to Mexican land grants.

Moore v. Steinbach, 127 U. S., 83.

"The grant was not one of quantity, but by metes and bounds; and the final survey, approved by the Land Department, determined *conclusively* the exterior boundaries of that grant.

In that case the court added:

"A call for a natural object in a survey controls both course and distance; and there "is no sound reason for the distinction between a call for a river at the end of a line, and for a river in the course of the line."

Newsom v. Pryor, 7 Wheat. 12.

Brown v. Huger, 21 How., 321.

"A call for a natural object, as a river, a spring, or even a marked line, will control both course and distance."

St. Clair v. Lovingston, 23 Wall., 62.

Entries made on public lands subsequent to patent cannot affect the title.

Stringer v. Young, 3 Pet., 337.

U. S. v. Stinson, 197 U. S. 200.

A party claiming as against a patentee may, if he have sufficient equities, bring a suit in equity in order to charge the patentee as a trustee for his benefit, or he may apply to the officers of the government to bring a suit to annual the patent; which they may do; but they are not clothed with power to set the patent aside.

Steel v. Smelting Co., 106 U. S., 447.

Unless in cases of fraud the decisions of the public surveyor upon equities of claimants are always conclusive.

Haydel v. Defresne, 17 How., 30.

In addition to the effect of the patent it must be remembered that the return of a surveyor general and his plats and certificates have the force and character of a deposition.

U. S. v. Low, 16 Pet., 166.

U. S. v. Hanson, *id.*, 200, 201.

No deposition could be more convincing. That of a sworn officer of the law, wholly disinterested, qualified for the performance of the duties entrusted to him, one who has made a painstaking and careful survey on the spot, and has made a permanent record of the results of his inquiries, which is examined and approved by the Land Department, remaining unquestioned for more than half a century must be received with the highest

respect. It is not only a written record, but it is one prepared with the highest degree of care and skill for a perpetual memorial.

"The private knowledge of a few particular persons who may know the spot thoroughly, is by no means equal to the authentic information which an actual survey, a regular report, and a correct record, can convey; and the instances are so very few, where exact information can otherwise be obtained, that there is no occasion for the sake of those to make an exception."

Sims. v. Irvine, 3 Dall., 462.

"There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys, and no other tribunal is so competent to deal with the matter as the Land Department. None other is named in the statutes. If in every controversy between neighbors the accuracy of a survey made by the government were open to questions, interminable confusion would ensue."

Russell v. Maxwell Land Grant Co.,

158 U. S., 258.

"The Land Department found and adjudged not only that the land in controversy was outside the exterior boundaries of the grant, but also that Throckmorton was not a purchaser in good faith. Both of these findings were matters of fact and based upon the testimony. No proposition of law controlled such find-

ings, and no error of law is apparent. Both questions of fact were determined by the Land Department adversely to the plaintiffs in error, and that determination concludes the courts. Counsel insists that there was no conflicting testimony. He ignores the survey which is in itself evidence, and that of a most persuasive kind. There are many things which a surveyor sees and finds in making a survey which are not and cannot be reproduced on paper, and which yet guide him, and wisely guide him, in the lines he runs. So that even in a case in which a survey is a proper subject of attack, it can be overthrown only upon satisfactory evidence of mistake. It cannot be ignored, and the only matter considered should be the tendency and significance of the oral testimony of witnesses as to lines, metes and bounds."

Congress has made provision "for the survey and sale of the public lands bordering on public navigable rivers, and the legal construction of the patents issued under such official surveys."

Gardner v. Bonestell, 180 U. S., 362, 379.
Ry. Co. v. Schurmeir, 7 Wall., 288.

IX.

ACQUIESCENCE—PRESCRIPTION.

If the defendants are disposed to criticise some of our witnesses on account of their old age, they will find that this is a sword that cuts both ways. The defend-

ants in their irruption into the island were both too early and too late. Too early, because there were still a few survivors of a past generation who remembered important facts bearing on the case, though doubtless defendants supposed them all to be dead; too late, because the bar of prescription had already attached.

In considering the effect of the lapse of time on a suit of this kind it has been often said that each case must depend on its own peculiar circumstances; hence precedents are not conclusive; but it will clearly be seen, we think, that this is a plain case for the application of all rules intended to restrict litigation, and to secure the repose of mankind, heretofore adopted.

Laches and prescription are convertible terms. Whatever one loses by laches some one else gains by prescription; otherwise the title would remain in abeyance.

Toltec Ranch Co. v. Cook, 191 U. S. 532.

Campbell v. Holt, 115 U. S., 622.

Sharon v. Tucker, 144 *id.*, 543.

Jacks v. Chaffin, 34 Ark., 541.

Townsend v. Johnson, 9 How., 417.

"While the words 'laches' and 'acquiescence' are often used as similar in meaning, the distinction in their import is both great and important. Laches imports a merely passive, while acquiescence implies active, assent; and while, where there is no statutory limita-

tion applicable to the case, courts of equity would discourage laches and refuse relief after great and unexplained delay, yet where there is such a statutory limitation they will not anticipate it, as they may where acquiescence has existed."

Wood on Limitations, Sec. 62.

At common law there was no period of limitation except in the single instance of a fine with proclamations.

Id., Sec. 2.

The first English statute was passed in the reign of Henry VIII. It fixed the period of sixty years where the claim was upon the seisin of ancestors or predecessors in possession at the time of the passage of the act.

As to several forms of action, now obsolete, it made the period fifty years.

Then for all other actions the period was thirty years.

Id., p. 629, Appendix.

Missouri Territory, of which Arkansas formed a part, was organized June 4, 1812.

2 U. S. Stat. at Large, p. 743.

Mississippi Territory was organized April 7, 1798.

Id., p. 549.

The State was admitted into the Union in 1817.

There is not a syllable of testimony to show that

either the Territory or the State of Mississippi ever made any claim to Island 76. There is no evidence that any person claiming to be a citizen of Mississippi Territory or State ever lived there, or owned any land there, or that any writ from that Territory or State was ever served there, until the defendants broke this long record of a century; and it is manifest that the individual action of Currie & Hull and of the defendants in this suit has had no higher motive than that of speculative gain.

In England the period of limitation as to the King was sixty years. He could do no wrong; and hence could not be guilty of laches; but all conquering Time would tell on him at last. The reason of the extension was that "the time and attention of the sovereign must be supposed to be occupied by the cares of government."

Broom's Leg. Max., 65.

There is no reason for such a rule in this country. No doubt some enlargement may be allowed for sovereign States. But we must not fail to distinguish between time and eternity; and whatever exceeds the span of individual life falls within the latter classification.

"Sixty years" is practically equivalent to seventy-five or eighty years, since boys and girls usually have but little or no knowledge of business transactions such as usually demand the attention of courts of justice.

All of our statutes of repose in this country—especially in the newer parts of it—are short. As all writs of subpoena stop at the gate of the cemetery, the rule laid down by the court below would paralyze the arm of justice in all cases of this kind.

The acts of the legislature and the provision of the Consitution of Mississippi concerning its boundaries could in no wise affect the rights of the plaintiffs, as they were under no obligation, either legal or moral, to read the legislative acts of another State. In order to counteract the operation of the principles of laches and acquiescence the State would have to take steps to assert a right of sovereignty over the island in a legal manner. Merely passing statutes would no more affect residents of other States than they would affect the attraction of gravitation. They could not amount to any claim to the island, and evidently were not so intended. They were notice to the citizens of the State; but to all the world besides they were nothing.

Pennoyer v. Neff, 95 U. S., 722.

It is impossible to regard these acts of the legislature and this constitutional provision as making any *claim* on Island 76.

"What is a claim? It is, in a just judicial sense, a demand of some matter *made by one person upon another,* to do or to forbear to do some act or thing as a matter of duty."

Prigg v. Pennsylvania, 16 Pet., 615.

"The mere assertion of a claim, unaccompanied by any act to give effect to it, cannot avail to keep alive a right which would otherwise be precluded."

Mackall v. Casileur, 137 U. S., 567.

Gildersleeve v. New Mexico Mining Co.,

161 *id.*, 579.

So far as the judgment of the court below is based on the constitutional and legislative acts of Mississippi (p. 106), it is erroneous.

No State has any extra-territorial jurisdiction.

Wilson v. Seligman, 144 U. S., 44.

Goldey v. Morning News, 156 *id.*, 521.

Hoyt v. Sprague, 103 *id.*, 521.

The delay in making any claim in this case, even if made by the State of Mississippi, would necessarily bar any relief. If acquiescence is not clearly established in this case then acquiescence must be a name for a thing that does not exist, or is so rare as to be practically non-existent.

In Hadley v. Anthony, 5 Wheat., 384, the court said:

"It is a fact of no inconsiderable importance in this case that the inhabitants of this land have uniformly considered themselves, and have been uniformly considered, both by Kentucky and Indiana, as belonging to the last-mentioned State. No diversity of opinion

appears to have existed on this point. The water on the northwestern side of the land in controversy seems not to have been spoken of as a part of the river, but as a bayou. The people of the vicinage, who viewed the river in all its changes, seem not to have considered this land as being an island of the Ohio, and as a part of Kentucky, but as lying on the northwestern side of the Ohio, and being a part of Indiana."

"While time is constantly destroying the evidence of rights they supply its place by a presumption that renders proof unnecessary."

Wood v. Carpenter, 101 U. S., 139.

Statutes of repose are now favorably regarded.

Leffingwell v. Warren, 2 Black, 606.

The bar of the statute confers a positive title.

Morgan v. Ry., 96 U. S., 722.

Elliott v. Pearce, 20 Ark., 508.

Walker v. Towns, 23 *id.*, 147.

"It has been a recognized doctrine of courts in equity, from the very beginning of their jurisdiction, to withhold relief from those who have delayed for an unreasonable length of time in asserting their claims."

Lansdale v. Smith, 106 U. S., 392.

Jenkins v. Pye, 12 Pet., 262.

O'Brien v. Wheelock, 134 U. S., 495.

Thirty-two years is an unreasonable time.

Strother v. Lucas, 6 Pet. 772.

U. S. v. Hughes, 13 How. 4, 14.

"Where the lien is to be enforced *to the detriment of a purchaser for value,* without notice of the lien, the defense (of laches) will be held valid under shorter time, and a more rigid scrutiny of the circumstances of the delay, than when the claimant is the owner at the time the lien accrued."

The Key City, 14 Wall., 660.

Innocent purchasers are always entitled to the protection of the court.

Cragin v. Powell, 128 U. S., 699.

"From the earliest ages, courts of equity have refused their aid to those who have neglected for an unreasonable length of time, to assert their claims, especially *where the legal estate has been transferred to purchasers without notice."*

Elmendorf v. Taylor, 10 Wheat., 168.

"The statute of limitations consorts with the rigid principles of the common law, but is ill adapted to the flexible remedies of a court of equity. The statute frequently works great practical injustice—the doctrine of laches, never."

Patterson v. Hewitt, 195 U. S., 317.

"Length of time necessarily obscures all human evidence, and deprives parties of the means of ascertaining the nature of the original transactions; it oper-

ates by way of presumption in favor of the party in possession."

Wagner v. Baird, 7 How., 258.

"The law of laches, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the peace, repose, and welfare of society. A departure from it would open an inlet to the evils intended to be excluded."

Brown v. Buena Vista County, 95 U. S., 161.

"But if in this respect there was a deviation, Rhode Island was not the less bound, for its commissioners were authorized to compromise the dispute. Surely this, connected with the lapse of time, must remove all doubt as to the right of the respondent under the agreements of 1711 and 1718. No human transactions are unaffected by time. Its influence is seen on all things subject to change. And this is peculiarly the case in regard to matters which rest in memory, and which consequently fade with the lapse of time, and fall with the lives of individuals. For the security of rights, whether of States or individuals long possession under a claim of title is protected. And there is no controversy in which this great principle may be involved

with greater justice and propriety than in a case of disputed boundary."

Rhode Island v. Massachusetts, 4 How., 639.

"Independently of any effort due to the compact as such, a boundary line between the States and provinces, as between private persons, which has been run out, located and marked upon the earth (as in the United States Survey by Pelham in this case), and afterwards recognized and acquiesced in by the parties by a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the course given in the original grant; and the line so established takes effect not as an alienation of territory, but as a definition of theh true and ancient boundary."

Virginia v. Tennessee, 148 U. S., 522.

In the case of Missouri v. Kentucky, 11 Wall., 402, the court said:

"This possession, fully established by acts like these, has never been disturbed. If Missouri has claimed the island to be within her boundaries, she has made no attempt to subject the people living there to her laws, or to require of them the performance of any duty belonging to the citizens of a State. Nor has there been any effort on her part to occupy the island, or to exercise jurisdiction over it. If there were proof that the island, by legislation, had been included in the limits of New Madrid County, then the service of a writ in

1820, on the solitary settler there by the sheriff of the county would be an exercise of sovereign power on the part of the State. But in the absence of this proof, there is nothing to connect the State with the transaction, or from which an inference can be drawn that the sheriff was authorized to go on the island with his process. And for the same reason, it is hard to see how the fact, conceding it to be true, that a person occupying the position of a circuit judge of Missouri, once lived on the island (when, or how long, we are not informed), tends to show that the State intended to take possession of it."

The opinion of the court below states:

"The authorities do not agree as to the length of time for which such acquiescence must continue before there will be a loss of jurisdiction. Some eminent writers on international law have suggested a period of fifty years; but I am of the opinion that the safest rule to adopt would be that of the common law, that in order to acquire title by prescription the exercise of ownership must have been for such length of time that the memory of man runneth not to the contrary." (P. 102.)

That is, until every one knowing anything about the facts is dead. This is not a case involving any principle of international law; and this court has always been open to the State of Mississippi to adjudicate any claim that she might prefer. This rule of sixty years

might have been a very good one in the days of Methuselah, when a man nearly a thousand years old could call in his neighbors who had been the companions of his boyhood; but now when individual life is merely an infinitesmal speck in the infinitude of space, it can hardly be commended. Laches and acquiescence are well known doctrines in courts of equity. They are applied according to the circumstances of each case; and the courts have no power to enact definite and special statutes of limitation.

The period of limitation for lands in Arkansas is seven years.

Dig. Statutes, 1904, Sec. 5056.

That of Mississippi is ten years.

Wood on Limitations, p. 741.

If the doctrine of laches does not apply in this case it is evident that the real period is such as to render the doctrine useless.

In other words, it is not applicable to our present state of existence.

Thirty-six years possession barred an adverse claim in U. S. v. Hughes, 13 How., 1, 4, 5.

"The delay of thirty years is such a delay as a court of equity forbids."

U. S. v. Des Moines Co., 142 U. S., 540.

And so of twenty-seven years.

Wehrman v. Conklin, 155 *id.*, 332, 333.

So of forty-five years.

U. S. v. Beebee, 127 *id.*, 347, 348.

So of forty years.

Clark v. Boorman, 18 Wall., 509.

So of fifty years.

U. S. v. Moore, 12 How., 222.

So of twenty-five years.

U. S. v. McLaughlin, 30 Fed., 147.

The defendants cannot defend by showing a title in the United States or another.

Croft v. Merrell, 14 N. Y. (4 Kern.), 460.

Wilson v. Madison, 55 Calif., 5.

Brenner v. Bigelow, 8 Kan., 496.

Harney v. Morton, 36 Miss., 411.

Western v. Estey, 22 Colo., 334.

Wilder v. St. Paul, 12 Minn., 192.

The defendants claim under a tax title; but if the lands belong to the United States they have never been taxable.

Van Brockelin v. Tennessee, 17 U. S., 168.

The court below thought that sixty years would be a convenient little period; but that period has been expressly stigmatised as absurd by this court.

"The fiction of presuming a grant from twenty years possession or use was invented by the English courts in the eighteenth century to avoid the absurdities of their rule of legal memory, and was derived by anal-

ogy from the limitation prescribed by the St. of 21 Jac. I., ch. 21, for actions of ejectment."

Fletcher v. Fuller, 120 U. S., 547.

A period of sixty years would be, in the great majority of cases, practically the same as one of a thousand years.

In the case just cited the court also said:

"Where any proprietary right is exercised for a long period, which, if not founded upon a lawful origin, would in the usual course of things be resisted by parties interested, and no such resistance is made, a presumption may be indulged that the proprietary right had a lawful origin." (P. 551.)

The long continued possession of the plaintiffs and their predecessors in title is sufficiently shown.

Simmons Coal Co. v. Doran, 142 U. S., 443.

Possession proved to exist is presumed to continue.

Lazarus v. Phelps, 156 *id.*, 205.

Every possession is presumed to be lawful until it is shown to be unlawful.

Ricard v. Williams, 7 Wheat., 107.

"In favor of long possession, in favor of strong apparent equity, much may be presumed."

Blight v. Rochester, *id.*, 546.

Shulenberg v. Harriman, 21 Wall., 50.

Possession is presumed to follow ownership.

Gonzales v. Ross, 120 U. S., 629.

"Property is not usually suffered to remain for long periods in the quiet possession of any one but the true owner."

Oaksmith v. Johnston, 92 *id.*, 345.

So far as the questions depending on the lapse of time are concerned, this case is singularly like that of Indiana v. Kentucky, 136 U. S., 508.

In some respects that is not so strong a case for the occupant as this, since the proof of long acquiescence, evidenced by repeated acts of the greatest solemnity, which especially mark the present litigation, are wholly wanting in that. Unless overruled, that decision disposes of the present controversy.

"Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession which will appeal to the conscience of the chancellor."

Abraham v. Ordway, 158 U. S., 421.

"The rule is peculiarly applicable where the difficulty of doing entire justice arises through the death of the principal participants in the transactions complained of, or of the witness or witnesses, or by reason of the original transactions have become so obscured by time as to render the ascertainment of the exact facts impossible."

Hammond v. Hopkins 143 *id.*, 250.

Baker v. Cummins, 169 *id.*, 208, 209.

Of course, increase in values is an important consideration.

Gallaher v. Cadwell, 145 *id.*, 372.

Arkansas v. Underhill, 1 Black, 325.

"Long possession is, nevertheless, a strong weapon of defence in the hands of one who can show reasonable proof that the title of the government has been parted with, and has devolved on him."

Hedrick v. Hughes, 15 Wall., 123, 131.

A grant, after long possession, will be presumed in ordinary private litigation. A larger period may be allowed on the claim of a sovereign State; but where one had a Mexican grant in due form a lapse of more than fifty years was held to confer a good title.

U. S. v. Chaves, 159 U. S., 462.

"If a claim could have a legal commencement the juries are advised or instructed to presume such commencement after many years of uninterrupted possession or enjoyment. Accordingly royal grants have been thus found by the jury, after an indefinitely long continued peaceful enjoyment accompanied by the usual acts of ownership."

U. S. v. Chavez, 175 U. S., 522.

There is no need of presumption of a grant in this case.

Our contention is that the question of laches and limitation are only of subordinate importance in this case. Holding under a patent, the highest title known to the law, the plaintiffs have no need of such extraneous aid. If the defendants had enjoyed a sufficiently long continued possession they might have set that up as against the patent. Our contention is that long acquiescence can only be explained on the theory that it was for a long period universally conceded that the east channel was the dividing line between the States; an admission that had satisfactory foundation in the survey and patent.

We venture to think that a fatal error in the reasoning of the court below is to be found in treating two matters separately that are in their nature inseparable. First the court found (as it seems to us without any evidence of value) that the main channel of the river in 1817 was west of the island, *and then* proceeded to inquire whether the plaintiffs had acquired title by reason of long possession; whereas long possession afforded very strong proof that the channel was not west of the island, but was as shown in the United States Survey, because otherwise no reason for such long acquiescence is supplied by the evidence. Stronger proof in fact could hardly be adduced.

That the decision of the cancelling board was apt to be correct stands upon a strong presumption. The

members of the board were specially chosen for the duty assigned them.

Having lived long in the State, and, no doubt, having often visited every part of it at different periods, so as to make themselves familiar with its geography and topography, having had constant opportunities of conversing with the oldest inhabitants, it cannot be denied that they possessed larger opportunities than we have, or that they possessed much information that is inaccessible to us.

In all cases in which claimants have been debarred by lapse of time few of the judgments have been so plainly demanded by all the circumstances as that at present invoked by the plaintiffs. True, in some of the cases the delay has been longer, but they lacked the important element of acquiescence that is so conspicuous here.

In Mississippi in case lands are improperly placed on the assessment list the statute provides as follows:

"If the land be sold for taxes when no taxes are due on it, or it is not liable to be sold for taxes, the sum paid by the purchaser for the amount of his bid, and the costs of the sale and conveyance, with six per centum interest per annum, shall be refunded to him, or the holder under him by descent or purchaser, mediately or immediately, by the State or county respectively, in proportion to the amount received by

each; *and in such case the claim against the State shall be audited and allowed by the auditor of public accounts on due proof, with the approval of the governor and the attorney general,* and he shall draw his warrant on the treasurer for the amount shown to be due; and the claim against the county in such case shall be allowed by the board of supervisors of the county, and paid out of the county treasury on the certificate of the auditor of public accounts of the refunding of the State tax. If in such cases, the money paid by the purchaser be not paid into the State and county treasuries, the collector shall be liable on his official bond to the purchaser for the amount so paid, and twenty-five per centum interest per annum on such sum, and the State and county shall not be liable. The provisions of this section shall extend to taxes collected for levee purposes where land is improperly sold, and the amount due in such case shall be paid to the proper person by the levee treasurer on the order of the levee board."

Annotated Code of Mississippi, 1892, Sec. 3831.

See opinion of the court below, p. 107.

It has often been decided by this court that where a special tribunal is authorized to hear and determine certain matter arising in the course of its duties its decisions within the scope of its authority are conclusive.

Johnson v. Towsley, 13 Wall., 72.

Turning to p. 292 of the transcript we find that the State of Mississippi conveyed the lands to W. G.

Ford January 9, 1854, fifty-three years ago. On the 29th April, 1859, Ford wrote to Gov. McWillie, enclosing the Downing letter, and urging him to secure a patent for him. (P. 68.) The governor accordingly wrote to the Commissioner of the General Land Office May 3, 1859, and a correspondence ensued; but no information was obtained of any fact that would tend to support Ford's title. After a full investigation, as we must suppose, Ford abandoned his claim; for his name does not appear again on the abstract of title.

The next conveyance is that of J. J. Ross to Clark and Stark. Who they were does not appear.

On January 9, 1857, J. J. Ross mortgaged the lands to Charles Clark and Peter B. Stark. The mortgage recites that the lands had "been conveyed to the said J. J. Ross by the State of Mississippi." (P. 294.) There is no evidence that Ross ever had any title. What became of the mortgage does not appear.

Then the lands were assessed in the name of "Unknown Owners," (p. 125) were declared delinquent, and were forfeited to the State for non-payment of taxes of 1881 (p. 125), and were sold and conveyed by the State to Currie & Hull September 28, 1891. (P. 125.)

On the 28th January, 1892, J. T. Williams conveyed the lands to Currie & Hull. (P. 298.) It does not appear that Williams ever had any interest in the

lands. On the 28th March, 1892, Currie & Hull executed a deed of trust on the lands to F. E. Larkin. What became of that does not appear.

The date of the forfeiture to the State was March 6, 1882, and Currie & Hull bought from the State October 26, 1891. Currie & Hull, having had time for examination, discovering that they had secured no title, applied to the proper board, consisting of the Governor, Auditor and Attorney General, to have the sale cancelled, and for a return of the purchase money; and the prayer was granted November 23, 1892. (Pp. 126, 143.) At the time that this finding was made T. M. Miller was Attorney General. (P. 140.) As we have seen, his successor Frank Johnston decided the same way.

On the 6th April, 1894, Edward A. Bowers, Assistant Commissioner of the General Land Office, wrote to Frank Johnston, Attorney General of Mississippi, in answer to a letter from him, that the lands lay in Arkansas. (P. 66.)

It will be seen that all the tracks go the same way. Every kind of pretence that the island was in Mississippi had faded out. But men spent several hundred years hunting for the philosopher's stone; and men will probably be searching for the lost treasures of Captain Kydd until the crack of doom.

It could not have been a very hard thing to get the lands placed again on the assessment list of Bolivar

county. Gathering in the taxes was the business of the assessor; not to ask the reason why. Most probably he knew nothing about the previous cancellation of the deed to Currie & Hull, and knew nothing of the channel of the river. Anyway the assessment would do no harm. It would not require any great strain to suppose that the revival of this old claim was due to those who now wish to profit by it, seeking to reap where they have not sown, to gather where they have not strewn. While resolving to fathom the remote past upon which the pall of oblivion had well nigh settled, they were not unmindful of modern roads that have often led to success, though not always to peace and right living. "Let us combine," they said; and they combined, and pooled their claims. (P. 52.)

As to the action of the refunding and cancelling board in cancelling the purchase of Currie & Hull, we shall not say that it is absolutely conclusive. It might be set aside for fraud or mistake. It is clear that Hubbard v. Garfield, 102 Mass., 75, cited by the court below, has no bearing, because in the very extract quoted in the opinion (p. 109), it is stated that "the law in question expressly gives the power of re-assessment to the assessor for the time being."

Lemly v. Commissioners, 85 N. C., 379, only holds that a board may rescind one of its own orders on finding that it was made by mistake.

In People v. Roberts, 155 N. Y., 408, 413, there was no board; and it was held that one assessor was not estopped by the action of his predecessor.

These cases, cited in the opinion of the court below, (pp. 109, 110) shed no light on the question.

In this case there has been no reversal of the action of the board, and its judgment remains in full force and effect. And, besides, defendants hold under a deed from Curry & Hull, and hence are in privity with them (see answer, p. 44); with the very persons at whose instigation the cancellation was made.

We see that it was forty-six years after the admission of Arkansas into the Union before any of the lands in controversy were placed on the assesment books of Bolivar county in Mississippi. Then no one would buy them even for the taxes. They were forfeited to the State; upon which Currie & Hull mustered up courage, and bought them from the State. Finding that they had obtained no title they later applied to the proper board, asking that the sale might be cancelled; and on full consideration the sale was accordingly cancelled, and the purchase money was refunded because the lands lay in Arkansas. No one appeared either for the patentees, or their successors in title, or for Arkansas; and the decision must have been wholly unbiased. The inquiry set on foot by Ford resulting in the correspondence with the land officers must have terminated in the same way.

One cannot read this transcript without perceiving that the attitude of the State of Mississippi throughout has been eminently honorable, and perfectly consistent from the very beginning down to this hour. If, according to the best lights that could be obtained, it had appeared that the island belonged to her, it would have been natural, and even praiseworthy, for her to claim it. Being convinced that she had no claim, she cannot be regarded as being guilty of laches. Her conduct was simply the expression of a deliberate and honest conviction that she had no just claim to these lands. Certainly this long and unvarying record affords a very strong presumption that the facts demanded just that kind of acquiescence that was thus exhibited. Had there been any real dispute no doubt it would have been duly adjusted long ago. The evidence is clear that no such dispute ever existed, and that no such dispute exists now.

No doubt the legal advisers of the State of Mississippi knew the law applicable to cases of this sort and acted accordingly.

But if the case had been one of laches only the finding would not be different.

It may be said that these officers had no authority to change the boundary of the State. But the fact remains that the legislature and all departments of the State Government acquiesced during many years; and

"the presumption is that the legislature will not delay to do that which it ought to do."

Inglis v. Trustees of Sag Harbor, 3 Pet. 144.

But in this case the legislature had expressly delegated the power to decide all questions of this kind to the Governor, Auditor and Attorney General without appeal. This was a judicial tribunal. In a case involving a State boundary this court said:

"The State of Virginia is *de facto* in possession of the territory in question. She has been in possession, and her title and possession have been undisputed since she resumed possession in 1847, pursuant to the act of Congress of the preceding year. *More than a quarter of a century has since elapsed.* During all that time she has exercised jurisdiction over the territory in all respects as before she ceded it to the United States. She does not complain of the retrocession. The political departments of her government by their conduct have uniformly asserted her title; and the heads of her judicial department have expressly affirmed it. The United States have not objected. No murmer of discontent has been heard from them."

Phillips v. Payne, 92 U. S., 132.

In the same case the court said:

"The law of prescription applies to nations with the same effect as between individuals. * * * For

certain purposes the States of the Union are regarded as foreign to each other." (P. 132.)

It may be said that the sovereignty of the State of Mississippi never resided in the cancelling board. To this we reply, "The State is but a political corporate body, and can only act through agents."

Poindexter v. Greenhow, 114 U. S., 288.

"And it would be absurd to say that any act was not done by a State which was done by its authorized agents."

Briscoe v. Commonwealth Bank, 11 Pet. 318.

"The solemn act of a State, which has been sanctioned by all the branches of its power cannot under any circumstances be lightly regarded."

Craig v. Missouri, 4 Pet., 458.

X.

DEFENDANTS HAVE NO STANDING IN COURT.

As no patent has ever issued from the United States to the State of Mississippi, the defendants are not in a position to contest the title of the plaintiffs.

Stringer v. Young, 3 Pet. 337.

Chotard v. Pope, 12 Wheat., 590.

Carroll v. Safford, 3 How., 461.

There is no charge of fraud or unfairness.

Lytle v. Arkansas, 9 How., 335.

The Swamp Land Act of September 28, 1850, only granted lands "which shall remain unsold at the passage of this act."

The defendants have no standing in court unless they can show a prior right.

Schaer v. Gliston, 24 Ark., 137.

Holland v. Moon, 39 *id.*, 120.

Miller v. Gibbons, 34 *id.*, 213.

Dewees v. Reinhardt, 165 U. S. 392.

A mere intruder without title cannot attack the judgment of the Land Department.

Ehrhardt v. Hogaboom, 115 U. S., 69.

Bates v. Ry., 1 Black, 208.

The defendants show no interest in the lands whatever. The State of Mississippi could only acquire title by patent; and as a patent has already issued no patent can never be issued to that State.

Rogers Works v. Emigrant Co., 164 U. S., 570.

The defense partakes largely of the burlesque; an effort to introduce a new form of extra-territorial and insular expansion, exhibiting the extreme results of the modern commercial spirit, seeking money by rapid and novel expedients. There had never been any dispute about the State line as between the two States. It was Currie & Hull that first thought of expansion by tax title; but after inquiry and deliberation they were fain to abandon what had seemed a flattering hope, and

to get back the small sums that they had put into the venture.

The defendants hearing of this fiasco, and trusting in their own superior astuteness and sagacity, seized upon another tax title as a practical lasso for lands in Arkansas.

Nothing could be more unjust. Plaintiffs lived in Illinois, and had not the slightest notice of this contemplated grab game. Finally when the defendants had got their deed they pooled their issues, sent an armed man to take possession, and brought various suits against the plaintiffs in Bolivar county, Mississippi, and sent writs over to the island, the first known coming from that State; and had them levied on this "isle of beauty." Never since the foundation of the world had such a thing been known.

Now the defendants masquerade as clothed with all the sovereignty of the great State of Mississippi. In like manner the three tailors in Tooley Street issued a proclamation in which they styled themselves, "We, the people of England."

It would be difficult to imagine anything more absurdly spectacular. In order to indulge in such an impracticable scheme one must have had a yearning for the government of islands far exceeding that of Sancho Panza himself.

And what will defendants do with the island if they get it? They may convey it to Mississippi; but they will not be bound to do so. And even that would not settle the boundary. Mississippi, to be consistent, could not accept the island. She could not sue defendants for it, because she has deliberately sold and conveyed it to them; and though this was not done for the purpose of encouraging fillibustering on contigious territory, she would be estopped from further interference. Then would the prophecy of the Hon. Jacob Thompson be fulfilled, and the island would belong to neither State; but would be *Imperium extra imperio.*

This business of snaring adjacent islands and contiguous territory is just now in its infancy; but, if properly fostered it may in time amount to something worth while. Repeated snatches of this sort may result in such verdicts and judgments in the course of years as to make our State lines in their zigzag variations resemble an old fashioned Virginia rail fence; but this will only make a stronger appeal to lovers of the romantic and the picturesque. There may be an element of injustice in it. When a mistaken State line is corrected on a re-survey, a citizen may have his allegiance transferred; but ordinarily he will not lose his lands. In this case, however, the proposed change of the line would have the effect to confiscate the lands of the plaintiffs. This may not seem just; but perhaps diligent search in ancient

chronicles might show precedents in which various nationalities have enacted a part not altogether different; and "what Cato did and Addison approved cannot be wrong."

This court, however, has not taken such latitudinarian views of this question.

The boundary of a State intimately concerns her sovereignty, and is something that is not peddled around with tax titles. The State of Mississippi is not a party to this suit; and if she were a party merely as a representative of private litigants the case would have to be decided as one solely between the parties claiming adversely as private suitors.

U. S. v. Beebe, 127 U. S., 398.

"It is well settled that when the government proceeds to set aside its patent, not for the sake of establishing its own right to the property, but in the interest of some person who has an equitable claim thereto, or to whom the government owes the duty of protecting his interests, it is subjected to the same defenses, of laches, limitation and want of equity that would attach to a like suit by an individual."

Moran v. Horsky, 178 U. S., 213.

All the other States and the United States have an interest in the boundaries between the States; an interest that is sovereign and paramount; consequently a

settlement of the boundary between the States cannot be adjudicated solely between private parties.

Florida v. Georgia, 17 How., 494.

Otherwise the danger of collusion would be extreme. The parties to the suit might "by admissions of facts, and by agreements admitting or rejecting testimony, place a case before the court which would necessarily be decided according to their wishes, and the interest and rights of the rest of the Union excluded from the consideration of the court."

Id., p. 495.

Virginia v. West Virginia, 11 Wall., 54.

In the case of Phillips v. Payne, 92 U. S., 134, a private person brought the suit to test the validity of the retrocession of Alexandria to the State of Virginia. The court said :

"The plaintiff in error is estopped from raising the point which he seeks to have decided . He cannot, under the circumstances, vicariously raise a question, nor force upon the parties to the compact an issue which neither of them desires to make."

"Where the government is suing for the use and benefit of an individual, or for the prosecution of a private and proprietary instead of a public or governmental right, it is clear that it is not entitled to the exemption of *nullum tempus*, and that the ordinary rule of laches applies in full force."

French Republic v. Saratoga Vichy Co.,
191 U. S., 438.

This case is very similar. The State of Mississippi has no interest in the suit.

The jurisdiction to settle boundaries between the States and between States and Territories can only be invoked by a State or by the United States.

U. S. v. Texas, 143 U. S., 641.

In Coffee v. Groover, 123 U. S., 30, the court said:

"Settlements of boundary belong to the sovereign power, and cannot be questioned by individuals."

It is clear enough that if the channel had not changed in 1882 this suit would never have been brought.

Respectfully,

D. E. MYERS,
U. M. ROSE.
For Appellants.

W. E. HEMINGWAY,
G. B. ROSE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

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No. 222.

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vs.

R. J. McGUIRE, E. H. WOODS, E. S. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, HUBERT WILSON, AND C. L. JONES, APPELLEES.

REPLY BRIEF FOR APPELLANTS.

D. E. MYERS,
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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25444

(20,127.)

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REPLY BRIEF FOR APPELLANTS.

We desire to call the attention of the court to and correct a few prominent *misstatements* of fact in the brief of counsel for *appellees.*

First. Adversary counsel, on first page of their brief, state that *"Island 76* is situated in the Mississippi river, and is now attached to the main shore of Mississippi and is an island only during high water."

The foregoing statement is palpably *in*correct. See deposition of *Charles Levasseur,* Record, *top* page 178, date 1905. See *Levasseur's* map, facing page 187, which shows the con-

dition of the channel east of Island 76 in 1881 and in 1899, and shows where *Calks* point was situated on the Arkansas side above Island 76, as spoken of in testimony of Capt. Marshall Miller, Wilcox, Drinkwater, and Malone, and said map is absolutely accurate, as nearly so, anyhow, as engineering science and skill can make such *survey* by actual triangulation, sounding, and measurement.

Again, this plat and survey of *Levasseur* shows the width and depth of the channel in 1881, after the change had set in, and in 1899, after the change in the channel had been going on for several years, and also the depth in 1899, as well as the sand-bar formation caused by the cutting away of *Rouses* point, above Island 76 on the Arkansas side, together with an entire plantation of original formation, including houses, gin-houses, cabins, etc.

Captain Wilcox's deposition, Record, p. 118.

Second. Another statement in the brief of appellees on page 9 thereof is misleading. It would convey the impression that witness, Capt. Marshall Miller, had been unable to work for nine years, whereas his testimony is that he had been at work as captain and pilot of boats *up to three* years before his deposition was given (Record, top page 113).

NOTE.—It was suggested by the court in Missouri *vs.* Kentucky, 11 Wal., that "barges" and "flatboats" were usually run in only high water on the Mississippi river. Now we desire to call the court's attention to the fact that in 1839, when Captain Miller first examined the channel at Island 76, as assistant pilot or student under his father (on a steamboat), it was the lowest stage of water ever known. Captain Miller says:

"Q. Was that in low or high water?
"A. Low water. It was very low. That year it was one of the lowest waters ever known.
"Q. That was in 1839?
"A. Yes, sir."
Record, p. 113.

Third. We wish to call attention to the fact that the testimony of Captain Miller as to what his father and brother told him about where the channel at Island 76 had been from 1802 and 1812 was brought out by *appellees* on cross-examination (Record, p. 113-115).

Fourth. We wish to call attention to *"Note,"* page 14 of brief for appellees. He suggests that the map facing page 366 (top page 234) of the record is incorrect in some particulars. If so, counsel for appellants do not know it. They believe it to be a reproduction of the same as actually introduced in evidence. Of course, we have not access here to the original, and only having received a copy of adversary counsel's brief on February 27, while in Washington, have had no chance to verify; but if an error has been made in the transcript that can be shown to us, we would *quickly* agree to a correction. Still we believe this somewhat peculiar map, which (so far as we can learn) never found its way into the Land Office of the United States Government (letter of the Hon. John A. Wilson, Land Commissioner, to the contrary notwithstanding), is just as introduced.

Again, said map facing page 234 seems to have the measurement from the main shore of Mississippi across to the head of Island 76 to be *29 chains,* or a little over *2,900 feet.* This measurement was made by triangulation, but sure it is that *no measurement was made by the surveyor on the map of the width of the channel at any other point.* All the rest of the channel as to width being an *eye sketch,* we will call attention to this map in another connection.

II.

Map of Island 76, Known as the Mississippi Partial Map, Produced with Deposition of E. H. Nall, Facing Top Pages 234-235 of Record.

Much stress is laid by appellees' counsel on this map, claiming that it supplements the first plat of township 21, range 8 west, made by Benjamin Griffin in 1830, purporting on its face to be a complete plat of that township and range, which plat faces top page 176 of the record.

Now, the only way the Nall map, facing page 234 of record, has any connection with the general plat of 1830 that we have been able to find is the following notation thereon, to wit, "also traverse and retraverse of Island 76," but we find no traverse and *retraverse* of the island on map facing page 234.

(*a.*) Again, the plat and survey of Island 76, facing page 234, was not made according to the acts of Congress, as we understand it, under the facts as they appear. Section 2395, Revised Statutes of the United States, is as follows:

"SEC. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require."

Rev. Stat., U. S.

Not only must the boundaries of each section, half section, and quarter section be shown, but also the contents of each.

Id., sec. 2396.

Now, turning again to map facing page 234, we find that no attempt was made by the surveyor to divide the island

into quarter sections and half quarter sections and fractional half quarter sections by running the lines at right angles north and south, east and west, but instead laid the whole island off into lots or strips running east and west, or nearly so. *This was not necessary,* because Surveyor General Pelham, in his survey of said island in 1846 (map facing record page 172), strictly followed the acts of Congress by running his lines east and west, north and south, or nearly so, dividing into quarter sections, half quarters, and fractional half quarters, &c.

It was under the Pelham survey that the island was sold by the United States Government.

(*b.*) *Again,* this plat facing page 234 seems to be a *misfit,* all round. We are informed by the field notes (Transcript, p. 213) that the island was first surveyed to fit township 22, range 8 west, and the bank of the Mississippi at that point, but it was found that was wrong, and they dropped down to the southwest corner of township 22 and northwest corner of township 21, opposite the head of the island, and at that point, triangulated across to the island, and found the exact distance across the channel at that *time to be 2,920 feet* (*Record, p. 213*).

This certainly explodes the theory of the experts, McAndrews and Shackelford, and the old river maps, and the Downing theory, and the lower courts, expert theory as to the width and navigability of that channel at that time, 1830.

(*c.*) *Again,* in the brief appellees, on page 103 and other pages, says "both parties claimed a tax title under the different States." Now, we submit that neither the above statement, nor any similar one contained in said brief is correct.

It is true that appellees claim and derive their so-called title through and under a tax title pure and simple. Their grantor, the State of Mississippi, never had a shadow of title, and sold the lands, of which it never had possession or title

to sell, to these appellees for the princely sum of about 20 cents per acre (See deeds from Mississippi to defendants, Transcript, p. —).

(*d.*) *Again*, the appellants claim under patents issued by the United States Government to citizens of Arkansas in Arkansas and to the State of Arkansas and in strict accordance with a survey of Arkansas made by a United States surveyor of public lands, *appellants* deraigning their title down through and from these various patents (Record, p. 13 to 25; see abstract of title, Record, p. —) and various deeds and decrees.

(*e.*) It is true that *appellants' vendor*, Sallie A. Murphy, obtained her title to a large portion of said land by reason of tax delinquency, but not at a tax sale, but under a proceeding in equity on behalf of the State of Arkansas, under a statute of 1881 to foreclose a lien on the lands for unpaid taxes. See decree and proceeding and commissioners' deed (Record, p. —). The rest of said land, *51* acres, she bought outright from the State of Arkansas. It holding under a patent from the United States, *surely the court below had jurisdiction of this 51 acres.*

NOTE.—It will be noticed by turning to the abstract of title filed by appellants that these lands only became delinquent for taxes in 1879 (Record, p. —), and the liens were foreclosed in chancery and sale made in 1882, so it appears affirmatively that from 1847 or 1848, the date of patents, all taxes had been paid in Arkansas up to 1879, and all have been paid since. See Meek's deposition (Transcript, p. —).

(*f.*) Adversary counsel in his brief seems to almost stake his case on the letter of "A. Downing," written in January, 1859, to his friend, W. G. Ford, to help him, with the Gov-

ernor, to get a patent from the United States Government; and the court will see that this letter was the *"limit"* when compared with all the established facts in the case. *The learned court below, in his opinion, inadvertently,* no doubt, states that Mr. Downing wrote the letter to Governor McWillie. In this His Honor was mistaken. It was written to his friend, W. G. Ford (*if ever written*). It purports to be from one private citizen to another. Neither official nor semi-official; neither the handwriting of the letter nor the signature are shown to be that of Downing. There is no proof of any character that "A. Downing" is dead. We submit that no ranker piece of incompetent testimony was ever offered in a court of justice. Yet this letter is relied on, and much stress is given to it, and great weight it attached to it, both by the court below and adversary counsel. Certainly their argument would not be complete without it. Without it their case is not made out.

Again: But suppose the letter was genuine and competent (*it was excepted to*—see Record, p. —); yet Mr. Downing is flatly contradicted by the map of Benjamin Griffin, of 1830-'32 (facing page — of record).

It is contradicted by the Pelham map of 1846. It is contradicted by the Nall map, or Griffin map, facing page —, and field notes to same. It is contradicted by Capt. Marshall Miller, by Mrs. Burrus, and others—in fact, by all the reliable testimony in the record.

Besides this, the Hon. Thomas A. Hendricks, Commissioner of the General Land Office (Record, p. 70), wrote a letter in which he says of this Downing letter: *"If, therefore, you will add to it his* (Downing's) *affidavit,* together with the testimony of another disinterested witness," &c. Mr. Downing *never swore to that letter.* Thus the matter fell still-born. The fact is, he could tell any kind of a *tale* for his friend, *but would not swear to it.* We will leave Mr. Downing and his letter to the tender mercies of the court. *"Requiescat in pace."*

III.

Adversary counsel in his brief asserts that the testimony of Capt. Marshall Miller as to the statement of his father and brother to him in 1839, that the channel east of Island 76 had been practically the same since 1802 and during the war, is all the evidence that appellants have, traditional or otherwise, that the *deeper* channel and *main* channel and channel of commerce at the island, particularly in low water, was east of the island.

This proposition we earnestly *controvert.*

First. The Griffin map of 1830-1832 of township 21, range 8 west, shows plainly that in 1830, under a survey of Mississippi, the channel was undoubtedly on the east of the island.

Second. The map produced by E. H. Nall, showing a survey of Island 76, shows it because it *conclusively* shows that at the upper end of the island it was *2,900 feet* from the Mississippi shore to the island, and that *this* was the *only* point where the width of the channel was actually measured.

Third. Again we insist that the McRee map of Arkansas, surveyed in 1827-1829, while Arkansas was still a Territory, shows that the island belongs to the Territory of Arkansas.

It is true that McRee did not sectionize the island, but he did survey to the island and different points thereon. It will also be noticed that in crossing to the island from the lines run he did it on foot nearly, or certainly more than half way, across.

Levasseur says in his testimony as an expert, speaking from the plat and work, that evidently the surveying party practically walked across and carried the chain.

Again, Mr. McRee triangulated from the Arkansas to the Mississippi shore at both the head and foot of the island,

and sketched in the channel on the eastern side, and by placing the scale to it, it shows at that time a *broad* channel or body of water east of the island, and that the deeper channel was there.

Fourth. Again, it is conceded that appellants have conclusively established by living witnesses, outside of the maps, that in *1839* the main or commercial channel of the river was east of the island, not so wide as the west side or chute, but deeper, and the only channel in low water.

Now, having established the fact that the main channel of the river was east of the island in *1839, we have the presumption of law that it had been so for all time in the past, and so remained for all time in the future,* unless that presumption be overcome by satisfactory evidence. This proposition of law is conceded by the court below and by adversary counsel; hence we cite no authorities.

We confidently submit that appellees have not by proof and evidence overcome this *presumption.* They in fact have nothing to rely on that is pertinent and competent for any purpose, except the reconnaissance map of 1821, which has been discussed in main brief.

(*a.*) Owing to great lapse of time, the death of all witnesses to the physical cotemporaneous facts prior to 1839, we must necessarily rely upon tradition and other writings and publications of the most reliable kind and the history of the channel prior to that date. We trust that the court will permit us to say that we have searched and written to every place we could expect to find the publication known as the *Navigator,* published in Pittsburg, in 1806 to 1813, by A. Kramer, and certain maps, but were unable to find them previous to the trial in the court below; also a public map of the Mississippi river by Samuel Cummings, published by Littell, in Philadelphia, in 1822, but were unable to locate

them until to-day, and after a long search, located them, or some of them, in the Congressional Library in Washington.

(*b.*) The book known as the *Navigator,* with surveys and plats of the Mississippi river, is a carefully prepared publication, published expressly to aid and direct pilots on that river; hence prepared and verified each year to that end; hence carries with it more variety than any ordinary public map or history, because published and revised every year or two as a correct chart to aid and control navigators.

(*c.*) As to the channel at Island 76 in the year 1808, the *Navigator* says:

"Island 76 lies in middle of river. The left side of No. 76 is best in low water. The right is the nearest" (*Navigator,* 1808, p. 110).

(*d.*) As to the same point in the river the same publication for the year 1811 says:

"Island 76 lies in middle of river. The left side of No. 76 is best in low water. The right is the nearest" (*Navigator* for 1811, page 199).

(*e.*) Again Samuel Cummings' map and plats of the Mississippi river, published by Littell, at Philadelphia, in 1822, shows the eastern channel at Island 76 to be quite wide. We would say, with actual scaling, from 3,000 to 4,000 feet.

All of the above publications are in the Congressional Library. We can not get them out, but are told that the court can send for them.

(*f.*) *Can the court take judicial notice of the above public maps and publications* or look to them for the purpose of refreshing their memory or informing their conscience?

In Jones *vs.* The U. S., 137 U. S., p. 216, on this subject the court said:

"The judges may refresh their memory or inform their consciences from such sources as they may deem the most trustworthy."

Heath *vs.* Wallace, 137 U. S., 216, 138 U. S., 584, citing many cases.

Fremont *vs.* U. S., 17 How., 542, 557.

Brown *vs.* Piper, 91 U. S., 37-42.

State *vs.* Wagner, 61 Maine, 178.

"Upon the question of the existence of a public statute of the date when it took effect, they may consult the original roll or other official records."

Spring *vs.* Eve, 2 Mod., 240.

I Hale's History of Common Law (5th ed.), 19-21.

Gardner *vs.* Collector, 6 Wall., 419.

South Ottawa *vs.* Perkins, 94 U. S., 260, 267, 269, 277.

Post *vs.* Supervisors, 105 U. S., 667.

"As to international affairs, such as the recognition of a foreign government, or of the diplomatic character of a person claiming to be its representative, they may inquire of the foreign office, or the department of state."

2 Simons, 220-223.

Ex parte Hitz, 111 U. S., 766.

In re Baiz, 135 U. S., 403.

IV.

We shall not attempt to follow the very learned discussion of counsel for the appellees in his brief on the questions of long adverse *possession, laches,* and *acquiescence.* What such profound philosophers and dreamers as Cicero, Aristotle, and others thought and dreamed about international law as between kings' kingdoms and empires we are content to leave them with the fossiliferous remains of past ages, and believe we can find in modern decisions something more consonant with the present age and more applicable to the

condition and relations of the American States to each other.

(*a.*) All the discussion of the questions of laches, long possession, and *acquiescence* as discussed by those ancient authors on international law applied to kingdoms, empires, and strictly foreign governments, who could not sue each other to settle their disputes because there was no tribunal having jurisdiction of their controversies, and they could only settle their differences by *treaty* or the sword. One nation had no power to force another nation to agree to a treaty, arbitrate, or litigate *so in* such cases.

A much longer time of *laches* and acquiescence was given to perfect titles by prescription than between the States of this Union, *because under our law* one independent State can sue the other at any time without the other's consent and have all their differences judicially and fairly adjusted. This fact is useless in this investigation—the ideas of the old writers on international law. In other words, the *American* rule, as established by and under a republican government should apply, and a shorter period of *laches,* possession, and acquiescence applies.

So, upon the whole case, we submit that the decree of the court below should be reversed and the appellants granted the relief prayed for.

Respectfully submitted,

D. E. Myers,
U. M. Rose,
For Appellants.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

October Term, 1906.

No. 222.

Office Supreme Court, U. S.
FILED.
MAR 4 1907
JAMES H. McKENNEY,
CLERK

WILLIAM MOORE ET ALS., Appellants,

vs.

E. J. McGUIRE ET ALS., Appellees.

BRIEF IN REPLY TO SUPPLEMENTAL BRIEF FOR APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ARKANSAS.

D. E. Myers,
U. M. Rose,
For Appellants.

W. R. Hemingway,
G. B. Rose,
Lee Banks,
J. W. Atkinson,
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Rose & Hemingway (Inc.), Printers, Washington, D. C. 25576

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE ET ALS., APPELLANTS,

vs.

R. J. McGUIRE ET ALS., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF ARKANSAS.

In reply to the supplemental brief for appellees filed March 2, after the hearing of the case was begun, we beg leave to make the following brief reply:

Counsel for appellees, for the first time in this case, object to the jurisdiction of the Federal court in this case—

First, because the claim of Appellants as to whether the lands in suit were within the boundary of the original grant, and cite for this position four, cases, to wit:

(*a*) Joy *vs.* City of St. Louis, 122 Fed. Rep., 524. This was an action of ejectment and also decided by Judge Trieber, and the judge in his opinion says: *"The jurisdiction of this court is invoked solely upon the ground that the cause of action is one arising under the laws of the United States."* The learned Judge, decided properly that in that case the court had no jurisdiction, and dismissed the suit.

The case was appealed to the United States Supreme Court—and decided, and inasmuch as the statement of the pleadings and facts in the opinion of the district judge were *very brief* we will not discuss this case further, but refer to the opinion of the Supreme Court in the same case, where the pleadings and facts are fully set out, to wit:

(*b.*) Joy *vs.* City of St. Louis, 201 U. S., 332: From the statement of the pleading in this case it appears that plaintiff's claim was based on a *Spanish concession,* dated in 1799, by *metes and bounds,* and by act of Congress of 1812, which provided for the settling of claims to lands in the Territory of Missouri, the title to *said concession,* survey, confirmation, and outlot was confirmed and granted to Labeaume, pursuant to act of Congress. Letters patent of the United States were issued to Labeaume, which patent was "sufficient to grant to Labeaume, or his representatives, *the premises mentioned in the patent*" (*Id.,* 334).

Plaintiff in his petition did not claim under this proceeding any land lying within the description of either the *Spanish concession* or the United States patent. *That was not in dispute,* and the title thereto *conceded.*

But plaintiff in his petition expressly and *only* sued for certain land which he claimed had *accreted* to the lands originally embraced in the *concession* and *patent* after the date of the same; in other words, it was a controversy *alone* over the *accretions* formed *after* the dates of the *concession* and *patent, and not* about *any* land embraced in the patent or covered by any act of Congress (Treaty, *Id.,* pp. 334, 335).

Justice Peckham, in delivering the opinion of the court, places it upon the ground that plaintiff had not stated any Federal question in his petition, and the court says: "In this case the real dispute, as stated by the plaintiff, is whether plaintiff is entitled to the land formed by *accretion,* which has taken place many years since the patents were issued and since the acts of Congress were passed. There is no

dispute as to the terms of the patent or of the acts of Congress" (*Id.*, p. 342).

The *question of fact* in the case was "whether the land contained in the original patent reached to the Mississippi river as its eastern boundary under the distances called for by the patent. (*Id.*, p. 342.)

The court further said: "Whether the plaintiff is, upon the facts set forth, entitled to the accretion is a question of local or State law, and is not one of a Federal nature." (*Id.*, pp. 342, 343.)

NOTE.—We submit that it is only necessary to turn to the complaint in the case at bar to show that it does not fall within the rule laid down in "Joy *vs.* City of St. Louis."

The case at bar being one of disputed boundary between States, and appellees having denied the title of appellants and disputed the boundary line between the States as claimed by them and denied that the island is in Arkansas, of course that true boundary becomes a mixed question of law and fact to be proven like all State boundary lines, but such facts and proof do not bring the case within the rule invoked by appellees.

(*c*) Filhiol *vs.* Torney, 119 Federal, 974, we submit, has no bearing on the case at bar, under any view of it. It was appealed.

(*d*) Filhiol *vs.* Torney, 194 U. S., 356. This is the same case (119 Fed. Rep., 974) and was an action of *ejectment*. It was evidently decided right, but we insist has no application to the point or any question involved in this case.

Second. That the circuit court had no original jurisdiction of this case as a controversy between citizens of different States claiming title under grants of different States, because none of the parties are citizens of the State of Arkansas, and cites Stephenson *vs.* Fain, 195 U. S., 165, as authority.

In the case above cited we find the facts to be as follows:

(*a*) Complainants in the bill were citizens of the States of New York and Rhode Island and the defendants citizens and residents of the States of North Carolina and Georgia. The suit was brought in the Circuit Court of the United States for the Eastern District of Tennessee *to remove a cloud* upon the title to a body of land lying adjacent to the boundary between Tennessee and North Carolina.

Complainants claim title under grants from the State of Tennessee alleging that the land lay wholly in Tennessee. The defendants claim under grants from the State of North Carolina, and claim that the lands lay wholly in North Carolina.

"The issue involved the true boundary line between North Carolina and Tennessee." The circuit court held that the lands lay in the State of North Carolina, and title was in the defendants, and dismissed the bill. An appeal was taken to the Circuit Court of Appeals, and, on hearing, the decree of the circuit court was affirmed—a decision on the merits. From the decree of the Circuit Court of Appeals the case was appealed to the United States Supreme Court.

NOTE.—As we understand it, the *sole* question involved was as to whether the decree of the *Circuit Court of Appeals* was *final* on the merits or whether an appeal lay from it to the Supreme Court.

The claim of jurisdiction was two fold:

First. To remove a cloud upon the title to the land, *which gave the circuit court original jurisdiction of itself.*

Sec. 738, Rev. Statutes.

Dick *vs.* Foraker, 155 U. S., 404,

Second. A controversy between citizens of different States claiming lands under grants of different States.

The syllabus of the case is as follows: "The circuit courts do not possess original jurisdiction over controversies between citizens of different States claiming lands under grants of different States by reason of the subject-matter, and the decree of a Circuit Court of Appeals in such a case is final, and an appeal to this court does not lie."

The Chief Justice, delivering the opinion of the court, held that, on the last proposition of jurisdiction alone, the circuit courts had no original jurisdiction "by reason of the subject-matter," and that the decree of the Circuit Court of Appeals was *final,* and further held that on said second proposition alone, in order to give the United States Supreme Court jurisdiction, the suit should have been first brought in the State court and brought up by writ of error to the court of last resort of the State (if we understand the opinion), but in that case the circuit court had original jurisdiction, because it was also *"a bill to remove a cloud upon the title to land"* and quiet the title, etc., which is one of the grounds of jurisdiction in the case at bar, among other grounds.

(See *original brief of appellants, pp. 69-70.*)
(Original bill, Record, pp. 1-13.)
(Amended and supplemental bill, Record, p. 37.)
(Waiver of question of jurisdiction, Record, p. 85.)

We submit that if in Stephenson *vs.* Fain, *supra,* the circuit court had dismissed the case on the ground of jurisdiction alone and so certified, the Supreme Court would have taken jurisdiction on appeal; but it was decided on the *merits,* and went up through the Circuit Court of Appeals.

Stephenson *vs.* Fain was decided after the bill in the present case was filed, and the criticism and explanation of Paulet *vs.* Clark and Colson *vs.* Lewis on matters *dehors* the opinions in those cases were not known. But we insist that the jurisdiction of the circuit court and this court is complete on several grounds.

The circuit court also acquired jurisdiction by seizure of the land and placing its receiver in charge.

Cooper *vs.* Reynolds, 10 Wal., 317-318.

Shields *vs.* Coleman 157 U. S., 178; see our original brief, pp. 69-70.

Again, appellants in this case claim under *patents of the United States and acts of Congress.*

Respectfully submitted,

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W. E. HEMINGWAY,
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FILED.
FEB 23 1907
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE and J. S. McFERREN, Partners, doing business under the firm name of MOORE & McFERREN,

Appellants,

vs.

R. J. McGUIRE, E. H. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, HUBERT WILSON and C. L. JONES,

Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Arkansas.

BRIEF FOR APPELLEES.

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GUNTHORP-WARREN PRINTING CO., CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE and J. S. McFERREN, Partners, doing business under the firm name of MOORE & McFERREN, *Appellants,* vs. R. J. McGUIRE, E. H. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, HUBERT WILSON and C. L. JONES, *Appellees.*	Appeal from the Circuit Court of the United States, for the Eastern District of Arkansas.

BRIEF AND ARGUMENT FOR THE APPELLEES.

(Reference to Record Marginal Pages.)

GENERAL STATEMENT OF THE CASE.

Island 76 is situated in the Mississippi River and is now attached to the main shore of Mississippi and is an island only during high water. It was platted and sectionized in 1830 as a part of the State of Mississippi, being described as follows, to-wit:

Lots one, two, three, four, five, six, seven and eight of section thirty-six and lots one, two and three of section thirty-seven in Township twenty-one North, Range eight West, in Boliver County and State of Mississippi. (Facing p. 366.)

And subsequently and in 1846 said island was platted and sectionized as a part of Arkansas under the following description:

Fractional Sections thirty-five and thirty-six, Township eleven south of the base line, Range one east of the 5th principal meridian and fractional sections one and two in Township twelve south of the base line, Range one east of the 5th principal meridian. (Facing p. 172.)

Known under different names, the island has been in existence as long as we have any records and extending as far back as 1765.

The appellants claim title through tax deeds to their immediate grantor from the State of Arkansas under the description as sectionized in 1846 as above stated, and the appellees acquired their title through tax deeds from the State of Mississippi under the description of the island as sectionized and platted in 1830, as above stated; both of the said states claiming jurisdiction over the island.

The appellees, after purchasing the island, took possession thereof and upon the forcible entry of the appellants, brought their suit of Unlawful Entry and Detainer, as the action is termed in Mississippi, in the courts of Bolivar County in the said state last mentioned, which suit was removed to the Federal

Court at Vicksburg by the appellants. The appellees herein likewise brought replevin for certain timber and saw-logs, when the sheriff of Bolivar County took possession and charge of same under the writ. Whereupon and after the institution of both of the said suits of the appellees herein, the said appellants herein filed the Original Bill in this case in the court below, among other things, praying an injunction staying the proceedings at law and the appointment of a receiver and alleging that the property was and is within the jurisdiction of the State of Arkansas and not within the jurisdiction of the State of Mississippi and praying that their title to said property be quieted.

The answer of the respondents below and the appellees here fully meet the issues of the bill and deny that the appellants are entitled to any relief in the premises.

THE FINDINGS OF THE COURT BELOW.

(p. 150 *et seq.*)

First.

"The western boundary line of the State of Mississippi is the middle of the main channel of the Mississippi River."

Second.

"The finding of the court is that in 1836 as well as in 1817 and long before that time Island 76 was East of the middle of the main channel of the Mississippi River and for this reason a part of the state of Mississippi and not within the boundaries of the state of Arkansas as defined by the act of admission of that state." (p. 163.)

Third.

"Upon the facts found by the court in this case there was no such acquiescence on the part of Mississippi, nor exercise of sovereignty by the state of Arkansas for such length of time as would warrant the court in holding that the state had lost its territory." (p. 182.)

STATEMENT OF LEGAL POINTS.

First.

The finding of the master, or the court below on the facts will not be disturbed unless the Appellate Court is clearly satisfied the finding is manifestly wrong.

Second.

Appellees understand that the Appellants contend as follows:

1. The Act of Congress of 1817 admitting Mississippi into the Union made the east bank of the Mississippi River the western boundary of said state, and hereunder

(a) Island 76 was never within the jurisdiction of Mississippi irrespective of where the channel of the Mississippi River may have been at said date.

2. The Act of Congress of 1836 admitting Arkansas into the Union made the middle of the Mississippi River the eastern boundary of said state, and hereunder

(a) That the main channel of the Mississippi River was east of Island 76 at the date of the admission of Arkansas into the Union, and hence the Island is within the territorial jurisdiction of that state.

3. That even though neither of the above positions are correct, that Arkansas has been in uninterrupted

possession of said Island for a great length of time and that Mississippi has acquiesced in said possession for so long a time that Arkansas now has title by usucapion and prescription.

4. That the act of the executive officers of the state of Mississippi in refunding the purchase money to Curry & Hull for said Island is an abandonment of the state's title to said Island, binding on the state of Mississippi by way of acquiescence.

5. That the Land Department at Washington having offered these lands for sale at Helena, Arkansas and sold them to certain individuals, patentees, under the Pelham Survey that said act was conclusive on the state of Mississippi and on the state of Arkansas as a settlement of their boundary.

6. That the United States government never having patented the lands to the state of Mississippi, but directly to individuals, Mississippi has no right to taxation.

To each of these positions, taking them in order, the appellees answer:

1. The Act of Congress admitting Mississippi into the Union made the middle channel of the Mississippi River the western boundary of the state of Mississippi, and hereunder,

(a) That in 1817, the date Mississippi was admitted into the Union, the main channel of the Mississippi River ran west of Island 76.

(b) That even in case the Court should hold the western boundary of Mississippi to be the eastern bank of the Mississippi River, the boundary of Mississippi would extend to the eastern bank of the main

channel of said river for navigation purposes and hence to the western bank of Island 76, including said Island within the territorial jurisdiction of Mississippi.

(c) That the jurisdiction of Mississippi once having attached, it remained fixed independent of any changes in the channel of said river from one side to the other of the island subsequent thereto.

2. The Respondents admit that the Act of Congress of 1836 admitting Arkansas into the Union fixed its eastern boundary as the middle of the main channel of the Mississippi River, meaning thereby the navigable channel of said river; but hereunder they assert,

(a) That the main channel of the Mississippi River in 1836 when the state of Arkansas was admitted into the Union was west of Island 76 and that said Island never became a part of the territory of Arkansas.

(b) That, independent of where the channel was in 1836, it was west of the island in 1817, which at the latter date became a part of Mississippi and remains under the territorial jurisdiction of said state until the present day.

3. Respondents deny that usucapion and prescription as generally asserted is a positive rule of International Law whereby one nation can acquire territoy of right belonging to another nation, but assert that said rule is merely a rule of evidence, aiding in the construction of treaties or the ascertainment of the true and ancient boundary, and hereunder,

(a) They deny that Arkansas under the Federal Constitution had the power to acquire and hold territory beyond the boundary defined by the act of congress, without the consent of Congress.

(b) That the claim of the doctrine of usucapion and prescription, cannot apply between two states, except where there has been a boundary commission of the states whose boundaries are to be affected by and with the consent of Congress or as an evidential aid of the true and ancient boundary.

(c) That Arkansas ever had such possession of Island 76 and exercised such jurisdiction over the territory of said Island as to warrant the invoking of the pretended doctrine of usucapion.

(d) That Mississippi ever abandoned or relinquished its possession so that the so-called doctrine of prescription could be invoked against her; but on the contrary, assert that she has held possession of said island from 1817 to the present date; and that Arkansas has not claimed possession for a sufficient length of time to obtain title under the pretended doctrine of usucapion and prescription.

4. They deny that the act of an executive officer, or officers within the state, can transfer title to property within the territorial jurisdiction of the nation or state or change or affect the boundary of said state.

5. They deny that the Land Department of the United States can change the boundaries between two states by the mere ministerial act of offering the land for sale, erroneously as within one or the other of the states.

6. They deny that the sovereign right of taxation belonging to a state is defeated by the Federal Government patenting land within its territorial jurisdiction to a citizen of the state or of a foreign state.

GENERAL STATEMENT OF THE FACTS.

A general outline or statement of the case having been made in the foregoing, including a statement of the legal points involved, it will be well here to place more fully before the Court the evidence and facts adduced at the hearing below and upon which the learned Judge predicated his findings of fact.

The first and most important fact to be determined is where the channel of the Mississippi River ran with respect to Island 76 in 1817, the date Mississippi was admitted into the Union.

The evidence adduced to this point by the appellants here,—the complainant below—consisted of oral testimony of living witnesses and also certain maps of the territory adjacent to the Island 76.

The living witnesses are Capt. Marshall J. Miller who testifies that he is seventy-eight years old (p. 184), a pilot and commander on the Mississippi River. Commenced running on the river in 1839. At that time the channel was on the Mississippi side. He thinks it changed in 1860 or 1865. Asked a leading question (page 186), says it changed from the Arkansas side to the Mississippi side in the early eighties. He learned to be a pilot under his father and brothers. He has been doing nothing for the last three years. Had La Grippe for over nine years and not able to go on with his work. (pp. 188 and 190.)

> "Q. State whether or not they (his father and brothers) represented to you where the channel

of the Mississippi River was in 1812 and from the time you commenced? Was it on the Mississippi side?

"A. On the Mississippi side. One of the first wood yards established on the Mississippi River was just above Island 76, on the Mississippi side —one of the first wood yards that was built. The plantations were opened by wood yards selling wood to steamers."

* * * * *

"Q. And your father and brother represented to you that the channel of the Mississippi River was on the Mississippi side at that time and during that period?

"A. Yes, and gave me where the channel ran from the time he commenced steam-boating.

* * * * *

"Q. Had there ever been a change in the channel?

"A. No sir, not in his memory and not in my brother's memory."

I quote this particularly, since this testimony is the sole and only statement in the record the complainants depend upon to overcome the positive testimony hereinafter mentioned as to where the channel at Island 76 was prior to 1839.

Capt. Thos. Wilcox (pp. 190-191), master and pilot, age 72. Has known Island 76 since 1847. Channel on the Mississippi side. Changed in 1882 to the Arkansas side.

Capt. A. E. Drinkwater (p. 196), master and pilot, age 62. Known channel since 1855. Channel on Mississippi side, changed in 1882 to the Arkansas side.

Mrs. L. M. Burrus (p. 303), 79 years old. Lived near Island 76. Knew the channel as far back as 1841. Was on the Mississippi side.

John C. Burrus (p. 306), age 53, knew the Island 76 in 1851. Channel on the Mississippi side.

J. Pindall (p. 249), age 60 years, known Island since 1862. Channel on the Mississippi side.

Geo. Malone pp. 252-3-4), pilot, age 69 years, known Island 76 since 1840. Channel on the Mississippi side, channel changed about 1882.

R. J. Mathews (p. 236), coal dealer, age 68 years, first knew Island 76 in 1857, channel on the Mississippi side.

The foregoing depositions constitute all the oral testimony introduced by the complainant touching where the channel at Island 76 was and the earliest date testified of is 1839—excepting alone the statement of Capt. Miller relative to his father and brothers' statement to him when a boy.

The complainant further introduces the following maps and plats:

1. Map of William Pelham, sectionizing Island 76 as part of Fractional Sections 35 and 36 in Township 11, Range 1 East of the Fifth principal meridian. This map bears the date of Dec. 23, 1846, and, survey was made in February, 1846. The map shows at that date the surveyor who sectionized the island considered it a part of Arkansas, though the arrow and the words Mississippi River indicate that the river ran between the island and the main shore and yet the field notes of this survey indicate that the channel at this date, 1846, was east of Island 76. (p. ...)

2. The next map introduced by the complainants is

a part plat of Township 21, Range 8, West Choctaw District. (Facing pp. 286-7.) This map is signed by Joe Dunbar, Surveyor of Public Lands south of Tennessee and is dated at Washington, Miss., May 31st, 1830. The plat contains only 35 sections and shows Island 76 unsectionized and contains the words "Mississippi River" and the arrow between the mainland and the island.

> NOTE.—It is important to note here that this map contains the following in writing on its face: "Surveying the boundary lines, all the sectional lines, connections with front sections, traverse of both sides Bolivar lake and traverse of the Mississippi charged by B. Griffin No. 3, 1832. *also traverse and retraverse of Island 76.*"—(followed by undeciphered words.)

This statement is important in considering this map with complete map of Township 21 North, Range 8 West, Choctaw District, to be referred to hereafter.

3. Map facing p. 301, being exhibit A to Le Vasseurs deposition, showing Island 76 practically joined to the main land of Mississippi at the present time.

The above depositions and maps are all that the complainants introduce to show where the channel of the Mississippi was in 1817, the date at which Mississippi was admitted into the Union. It is here that the Appellees take up the question and carry the proof back from 1839, the last date of the memory of any witness, and establish the channel absolutely by surveys and maps to have been west of Island 76 from

Appellees introduce map facing pages 446-447, 1821 continuously until after 1830.
entitled: Reconnaisance Mississippi & Ohio Rivers.

This map is properly certified to be a true copy of the original on file in the office of the Chief Engineer of the United States and contains the following certificate:

> "This reconnaisance of the Mississippi and Ohio Rivers was made during the months of October, November and December, 1821, by Capt. H. Young, Capt. W. G. Poussin of the Topog. Eng's and Lieut. S. Tuttle of Engrs. under the direction of the Board of Engineers. *The soundings of the bars were made during the months of October and November and it is believed that they are accurate for the lowest stage of water in common years. In very dry seasons the lowest stage of the water would be about* 10 *inches lower.*"

The next map introduced by the appellees consists of the fractional sections of Townships 11 and 12 South of the base line Range 1 East of the 5th Principal Meridian, which is to be found facing page 278. The map is attached as exhibit "A" to the deposition of Wm. McAndrews and on it appears the following certificate:

> "Surveyors Office, St. Louis, Jan. 22, 1829. The above plat of fractional Townships 11 and 12 South Range 1 East of the 5th Principal Meridian is conformable to the field notes thereof on file in this office.—Wm. McRee, Surveyor, etc."

And the caption shows that the survey was made *in February, 1827*, by Daniel Miller under contract of December, 1826.

3. The next map filed by the appellees is a map of facing page 366 and the map shows the plat of Township 21, Range 8 west, showing Island 76 sectionized as Sections 36 and 37 of said Township and Range.

[NOTE.—The plat filed in the record facing page 366 is not a correct copy of the plat actually filed and used by the court below, or actually introduced into evidence. That such is the case is shown by the following questions and answers in the deposition of E. H. Nall, at pp. 33 and 334, beginning with—

Interrogatory 11. "Please state whether or not, Mr. Nall, you have on record in your office the official copy of map of Township 21, Range 8 west, projected from the said field notes of Benjamin Griffin, deputy-surveyor, certified copy of which you have filed above to your deposition as Exhibit 'B' ".

A. "I have said map on file."

Interrogatory 12. "Please file with your deposition, as Exhibit 'C' thereto, a certified copy of the map."

A. "I file same as Exhibit 'C.' "

And also from the following questions propounded to Mr. W. J. Shackelford, at p. 390:

Interrogatory 9. "State whether or not you made any independent tracing of Island 76 from the field notes handed you and of the bank line of the mainland in Township 21, Range 8, and state what you ascertained relative to the accuracy of the map filed as Exhibit 'C,' attached to Mr. Nall's deposition."

A. "I made an independent plat from the notes and a traverse of the island from the notes, and not a tracing, and after comparing it with the map itself, found them to agree."

Interrogatory 11. "You should then say that the map marked Exhibit 'C,' and attached to Mr. E. H. Nall's deposition, was taken and platted from the field notes of Township 21, Range 8, which consists of the whole of Exhibit 'B,' attached to Mr. Nall's deposition."

And then the following, p. 392:

Interrogatory 18. "I ask you to file the map of Township 21, Range 8 west to your deposition, marking same as Exhibit 'B.' "

A. "Yes, sir; I did."

And also it appears from the deposition of Wm. McAndrews, p. 404:

Interrogatory 33. "I hand you, Mr. McAndrews, a map of Township 21, Range 8 west, Choctaw District of Mississippi, marked Exhibit 'C,' to the deposition in this case of Mr. E. H. Nall. Please examine same and scale the distance between Island 77 (a typographical error for 76) and the main shore of Mississippi."

Also see opinion of the court, p. —.

The matter is immaterial, except that the map is not identified as the exhibit to Mr. Nall's deposition, but it is clearly a copy of the map actually attached and identified as Exhibit "C" to Mr. Nall's deposition, and is in every respect identical with the map attached to Mr. Nall's deposition, with one exception; that is to say, that at the northern part of the Island 76, where the letters are "N. 40^5, E. 29° and N. 51°, W. 26°," there was a line drawn from a point scaling 26 chains from the north line of Township 21, Range 8 west, which is the south line of Township 22, Range 8 west, and the river bank across on the variations of the compass and chaining the distance of 29 chains to the head of Island 76. I will say that at the trial there seemed to have been a copy like this one filed herein, and also there was introduced the original copy used in taking the depositions, and identified by Mr. Nall and by each of the witnesses who testified with regard to this matter.

The above and foregoing is stated that the court may understand why the map facing p. 366 does not contain the letterings noted in the depositions. The scaling referred to by the witness not being made from the map in question, but being made from the actual tracing attached to Mr. Nall's deposition; but as stated above, the scaling, it is believed, will be identical on the map introduced here.]

Attached to the deposition of Mr. E. H. Nall are the field notes of Township 21, Range 8 West filed as exhibit "B" thereto, being divided into two parts, one 17 F" (at page 345) and "8 B" (at page 341), and it will be noted that Island 76 was first surveyed as a part of Township 22, Range 8 West, instead of Township 21, Range 8 West. (See p. 341.)

This last survey of Island 76 was made in October, 1830.

The foregoing and the three plats, including the field notes of Township 21, Range 8 West, show the channel from the year 1821 to 1830 with great accuracy and clearness.

The first plat is that opposite p. 446 and being the "Reconnaissance of the Mississippi and Ohio Rivers," and contains three sheets. The first sheet contains a table of conventional signs divided into colors, dots, etc., showing with great care and particularity, the following points: "Islands with growth of heavy timber, Islands with growth of willows, dry sand bars, rocks out of water, rocks under water, snags, etc., line of the channel, line of shallow water," and contains also a scale of miles for the length and a scale of miles for the width of the map.

Island 76, designated as Chapeau Island, is on the second page of the map,. said island being identified by the deposition of Mr. Andrews (p. ....), and by Mr. Shackelford as being the second island below the mouth of the Arkansas River and the first island below Ozark. Referring now to the table of conventional signs and to this map, we find that it is distinctly shown that in October, November and December, 1821,

at the lowest stage of the water in common years, the channel of the Mississippi River is designated at that date as west of Island 76. We further find that at the east of the island, that is between the island and the Mississippi shore and projecting northeast at the head of the island, almost touching the Mississippi shore is a dry sand bar and if we place the scale on this map we find that the part of the sand bar out of water, or the dry sand bar at this date came very close, indeed, to the Mississippi bank line, leaving a width not sufficient for the current, or channel of the Mississippi River by any possible means to have passed at that date, and in addition to this, we find the line of shallow water extending out considerable distance towards the main shore of Mississippi. The map in question, therefore, conclusively settles the fact that in *1821 the main channel of the Mississippi River ran west of Island 76.*

The next map is the survey of 1827, bearing date of Jan. 22, 1829, facing page 278, when fractional Townships 11 and 12 South Range 1 East of the 5th Principal Meridian was sectionized and an examination of this plat shows conclusively that at that date the Mississippi River ran west of Island 76. That is to say it shows careful triangulations of the Mississippi River at various points reaching from the main shore of Arkansas to Island 76 at three different points and touching the main shore of Mississippi above and below the island. The plat further shows a careful sectionizing of the main shore and it is particularly clear that at this date—the date of this plat—and of the survey of 1827, that the channel of the Mississippi River was west of Island 76.

The foregoing plat was made by the surveyor of Arkansas and is an Arkansas Map.

The next plat is the plat facing p. 366 about which comment has been made hereinabove, being the map filed as exhibit "C" to Mr. Nall's deposition. After an examination of the findings of the Court, page 158, we find that the map actually filed contains the indorsement: "The whole of this Township was surveyed by Benj. Griffin, Deputy-Surveyor, in January and February of 1830. Surveyors Office, Washington, Miss., May. 31st, 1830. Examined and approved—Joseph Dunbar, Surveyor South of Tennessee," and we also find from the same opinion, p. 159, that a copy of this map was filed in the Department at Washington in October, 1836, as shown by the letter of Hon. Thos. A. Hendrix, Commissioner of the Land Office in 1859. (p. 171.)

This map shows that in 1830, Island 76 was platted as a part of Township 21, Range 8 West, Choctaw District of Mississippi and is section 36 and 37 and the field notes filed at p. 341 show that the island was first sectionized, or intended to be sectionized as section 6 and 7 of Township 22, Range 8 West, but when the platting came to be done, it was found that Island 76 was opposite Township 21, Range 8 West and hence was platted as a part of said Township.

This explains the map of Township 21, Range 8 West facing p. 286 and in connection with the words written thereon: "Also traverse and re-traverse of Island 76." It is distinct that the plat facing p. 286 is not the complete plat of Township 21, Range 8 West.

Mr. W. J. Shackelford, a competent surveyor, platted from the field notes of Township 21, Range 8, as shown in his deposition a separate and distinct plat and found the plat filed as exhibit "C" to Mr. Nall's deposition to be in all respects in conformity with the field notes of said Township and he further found that the narrowest point between Island 76 and the Mississippi shore was 528 feet. (p. 391.) Thus, then it is distinct that in 1830 the island was platted as a part of the state of Mississippi and that the surveyors who made the survey then considered the island as a part of Mississippi, and in addition to this the distance across from the island to the main shore of Mississippi at the narrowest point did not exceed 528 feet and as shown by the deposition of Capt. Wilcox and Capt. West and others it is impossible that the channel of the Mississippi River could be confined within such a space. Thus, then it is conclusively established by record testimony of unimpeachable and unimpeached character, by measurements made by careful surveyors, actually on the ground, that the channel of the Mississippi River from 1821 to 1830 was west of Island 76 and therefore that Island 76 was a part of the territory of the state of Mississippi.

Corroborative of this testimony is the letter of Mr. A. Downing (end of p. 115). This letter is dated Jan. 18, 1859, and states that

> "I have for over thirty years been traveling up and down the Mississippi River. Island 76 was surveyed, I think in 30 or 31 as a part of Township 21, Range 8 West. At that time and for some time after, the Island chute, as it was called, was quite narrow. I think that about opposite the middle of the island, the chute was not over 100

yards wide. I have been told that deer had been and could be easily shot from the east shore of the river on the island, and *upon my own observation* I have no doubt they could, for at that time I had never heard of a steam-boat going up or down on the east side of the island. The main river then passed on the west side of the island. I think it yas in 1835, I spent some time on Township 21, Range 8 West, examining land in that township. The east bank of the river opposite the island has not fallen in much. The island chute at that time was quite narrow."

Mr. Dowing was formerly surveyor-general of Mississippi. Counsel have attempted to throw considerable doubt upon this letter and claim it is of no strength as evidence and is hearsay testimony, but this letter is a part of the official records at Washington, sent by the Governor of Mississippi to the Department with regard to Island 76 and can hardly be considered hearsay testimony and if admissible it is of great force and strength because it tells the personal observations of Mr. Downing and corroborates the maps filed herein absolutely and shows conclusively that the maps themselves are correct on their face and this letter further establishes the fact that the channel remained west of the Island 76 as late as 1835.

Counsel's comment on the Reconnaissance Map facing p. 446 as not being an accurate map, indicating that not sufficient time was given to the making of this map, but in filing the map attached as exhibit "A" to Le Vasseur's deposition, facing p. 301, they have given corroborative evidence of the correctness of this map for an examination of same will show about the same formation is now extending out to the head of Island

76 joining on to the main shore as then extended, and shows the contour of the island when cut into by the current to be about the same at the date this map was first made as when the map of 1821 was made.

We then have as against this mass of record testimony and the corroborative letter of Maj. Downing the bare statement of Capt. Marshall Miller of what his brother and father told him when a very young boy and in view of the time that had interversed and the feebleness, due not so much probably to advanced age, as to illness, or to both, of the Captain, it is quite possible that he misunderstood the statement of his father and brother. But even if not, that statement would be of little value as compared with the above evidence in the record.

I therefore submit that the finding of the Court below that the channel of the Mississippi River ran west of the Island 76 in 1817, the date of the admission of Mississippi in to the Union, and in 1836, the date of the admission of Arkansas into the Union, is sustained by the overwhelming facts in the record.

The other facts in the case will be stated in their proper place in the brief.

BRIEF ON LEGAL POINTS.

First.

The finding of the Master, or the Court below, on the facts, will not be disturbed unless the Appellate Court is clearly satisfied the finding is manfestly wrong.

The proposition is so well settled in this Court, and various State Courts, that no citations are necessary.

Second.

Stating the legal points in order, and giving the Appellees' reply to the Appellants contention, as stated above, we have—

First.

The Act of Congress admitting Mississippi into the Union made the middle of the main channel of the Mississippi river the western boundary of the State of Mississippi.

The Act admitting Mississippi into the Union and defining its boundaries, uses the words—

> "Thence west along the said degree of lattitude to the Mississippi river, thence up the same to the beginning."
>
> Hutchinson's Mississippi Code page 59, quoting Act of Congress of March 1, 1817.

The respondents—appellants—claim by these words

Congress intended to fix the western boundary of the Mississippi river. It is unnecessary, in view of the opin- of the Court, to more than refer the Court to the various treaties and acts giving an outline of the history and legislation affecting Mississippi territory as a Territory and as a State.

See—

Treaty of February 10, 1763, between Spain, France and Great Britain, fixing the boundary between Great Brittain and France as the middle of the Mississippi river.

Treaty of 1783 between Great Britain and America whereby Great Britain acknowledged the independence of America and designated the middle of the Mississippi river as its western boundary.

Act of Congress 1798 establishing the Mississippi territory, which Act is as follows:

> "All that tract of country bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the Yasous to the Chatahouchee river, on the east by the river Chatahouchee, and on the south by the 31 degree of north lattitude, shall be and is hereby constituted one district to be called the Mississippi Territory."
>
> Hutchinson's Code, page 54.

Act of Congress of March 27, 1804, concerning the grants of lands and the sale of lands in the territory, paragraph 7:

> "The tract of country lying north of the Mississippi territory and south of the State of Tennessee and bounded on the east by the State of

Georgia and on the west by Louisiana, shall be and the same is hereby annexed and made a part of the Mississippi territory."

Hutchinson's Mississippi Code, page 58.

Treaty between France and the United States of 1803 whereby France ceded Louisiana to the United States by a general designation of the territory by name, which of course embraced all that had previously been a part of Louisiana including the western half of the Mississippi river.

Note: The Act of March 27, 1804, adding to the Mississippi territory that part south of Tennessee, north of the Mississippi territory, distinctly made the western boundary of said territory Louisiana, which boundary had been fixed by the Treaty of 1763 between Great Britain, Spain and France, as the middle of the Mississippi river. Bolivar County is included within the territory added to the former Mississippi territory by this Act of 1804, as Bolivar County is north of the mouth of the Yazoo river; therefore by this Act that part of Mississippi territory from the Tennessee line south to a line drawn from the mouth of the Yazoo to the Mississippi is bounded, in so many words, by the middle of the Mississippi river on the west, and does not leave any room for interpretation whatever, *the actual words* designating the boundary.

Cession Act of Georgia of April 24, 1802, ceded to the United States "all right, title and interest, etc., to the land situated within the boundaries of the United States south of Tennessee, and west, etc."

Hutchinson's Mississippi Code, pages 55-56.

Said cession being made for the purpose of forming a state, as follows:

> "That the territory thus ceded shall form a state and be admitted as such into the Union as soon, etc., * * * and the United States accepts the cession above mentioned and on the conditions therein expressed."
>
> 5th paragraph of Hutchinson's Code, page 57.

Resolution of Congress of June 27, 1812, seeking consent of Georgia to form two states of the Mississipi territory.

Hutchinson's Code, page 58.

Act of Admission of Mississippi, March 1, 1817.

Hutchinson's Code, page 59.

Bolivar County Boundary defined 1836.

Hutchinson's Code, page 88.

Line between Bolivar and Coahoma counties and Bolivar's western boundary defined February 9, 1839, in which the following words are used:

> "Thence down the main channel of said Mississippi to the south boundary of Bolivar county."
>
> Hutchinson's Code, page 89.

Act of the Mississippi Legislature of February 27, 1856, defining the limits and divisions of the State of Mississippi.

Mississippi Code of 1857, page 47.

Constitution of Mississippi of 1868, Article II adopting the boundary lines of Mississippi as then established by law.

Mississippi Code of 1880.

Constitution of Mississippi of 1890, Article II, Sections 3 and 4, and Act of the Legislature
(Annotated Code of Mississippi 1892)

defining the limits of the State and counties.
Annotated Code Miss. 1892.
Morgan v. *Reading*, 3 Smeades & M., 366.

In *Handly* v. *Anthony* the Supreme Court of the United States used the following language:

"When a great river is the boundary between two nations or states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream."

Handly v. *Anthony*, 5 Wheat., U. S., 374.
Quoted with approval in *Indiana* v. *Kentcuky*, 136 U. S., 479.

See—Commenting on the Kentucky Boundary,
Missouri v. *Kentucky*, 11 Wal., U. S., 395.

"It is a rule of construction of deeds * * * between private individuals that the grant carries as far as the grantor owns."

(See Gould on Waters, Sec. Ed., par. 195.)

The same rule applied to the Congressional Act of 1817 would necessarily extend the jurisdiction of Mississippi to the middle of the stream.

"The term 'river' as employed to designate a boundary by the land owners whose title extends *usque ad filium acquae*, to the use of the water, means in law the center of the stream."

Gould, parag. 196, *St. Louis* v. *Rutz*, 138 U. S., 226.

This rule applies to a grant from the Crown, a State, or the United States, to navigable as well as unnavigable fresh streams, where the soil of fresh water rivers is held to be private property.

Gould, Waters, 196, and case cited. Note, 2, 3, 4; and see in this connection *Morgan* v. *Read, Supr.*

"Where a navigable river forms the boundary of co-terminal states, the middle of the thalweg (navigable channel) is generally admitted as the line of their separation, the presumption being that the right of navigation is common to both."

Creasy on International Law, parag. 230, page 21.

On this subject Vattel lays down the rule that when a nation takes possession of a country bounded by a river she is considered as appropriating to herself the river; but of two nations inhabiting the opposite banks of the river neither party can prove that they themselves, or those whose rights they inherit, were the first settlers in those tracts. It is to be supposed that both nations came there at the same time, since neither of them can give good reason for claiming preference; and in this case the dominion of each extends to the middle of the river.

Vattel Law of Nations, parag. 120, quot.
5 Wheat., 374, 3 Mass., 147.

Where a boundary follows a river it is not proven that either of the riparian states possess a good title to the whole bed; their territories are separated by a line running down the middle, except where the stream

is navigable, in which case the center of the deepest channel, and it is usually called the thalweg.

Hall, International Law, 104.
Glenn International Law 756.
Wheat. International Law.

It has seemed to us that the argument in the Mississippi Code of 1857 is conclusive as to this question, but the above citations will simply add to verify that opinion which was rendered by Chief Justice Sharkey, Judge Harris, and one other, whose name I now forget. Than Judge Sharkey no abler man has ever presided over a State court. The foregoing, in connection with the Act of the Legislature of 1804 bounding that part of Mississippi territory including Bolivar County and Island 76 by Louisiana, is absalutely conclusive of the question that the western boundary of Mississippi is the middle of the main channel of the Mississippi river.

a. In 1817, the date Mississippi was admitted into the Union, the main channel of the Mississippi river ran west of Island 76.

The proof in this case relative to the whereabouts of the channel divides itself into two classes:

(1) That by deposition, including hearsay evidence

(2) Official surveys and maps of the river and the contiguous states of Arkansas and Mississippi.

The Complainants establish by the preponderance of evidence that the channel of the Mississippi river was west of Island 76 from the present date back to 1881; from that date, or some times prior thereto, back to 1839, about September of that year, was east of Island 76; and at this last mentioned date the testimony of the

Complainants stops, except for the hearsay evidence of Captain Marshall Miller, who states in his deposition that his father and brother told him the main channel had always been east of Island 76, and had never changed from 1812. This statement of Captain Miller as to his father and brothers' statements is the sole evidence in the record, even a[illegible]inting at the channel being east of the Island at any date prior to 1839. The father and brother were in the flat-boating business.—

The comment of the United States Supreme Court, in the case of *Missouri* v. *Kentucky, Supr.*, is particularly applicable, even had these two men sworn to their own depositions, and to the facts stated therein; and particularly so when it is merely the hearsay recollection of what another has said with regard to his opinion of where the channel might have been.

Says the Supreme Court:

> "Only three men knew the river prior to 1820, and they were engaged in the business of flat-boating, which is hardly ever undertaken in a low stage of water. There is nothing to show that any one of them ever made a personal examination of the channels and the surrounding objects at this point, and there is a remarkable absence of fact to sustain their opinions."

We have no information from Capt. Miller at what stages of the water his father and brother passed up and down the river; how often during a given year, and how long they were in passing any particular point; and their statement is indeed of very little value. The fact of the matter is the age of Captain Miller, influenced by his recent illness, to which he testifies, is

probably responsible for the statement, because it is not in consonance with the absolute facts established by the evidence.

As against this hearsay testimony of Capt. Miller, the statement of Mr. Downing is more than conclusive, giving as it does not only his personal experience when in 1835 he visited the point in question, but giving the reputation in the community and stating the physical facts such as the width of the channel and the fact that he had never known of a steamboat to pass up and down on the east of the Island; of deer being shot from the main shore in Mississippi to the Island bank. All of these facts carrying the internal evidence of the correctness of Mr. Downing's statement. But apart from this hearsay evidence, which at least may be said to balance each other, prior to 1839 there is absolutely no proof whatever of where the channel of the Mississippi river was excepting alone the three official maps introduced by the Defendants, being the Reconnaissance Map of the Mississippi river of 1821, actually sounding the channel; the Arkansas map of 1829 of a survey made in 1827 failing to sectionize Island 76 as a part of Arkansas; and the Mississippi Map of 1830, sectionizing the Island as a part of the State of Mississippi;--all agreeing, in all of their essential details, and absolutely placing the channel of the Mississippi river west of Island 76 from 1821 to 1830.

These maps were made by men actually on the ground,--the engineers of the United States, for the purpose of ascertaining the greatest depths of water for vessels in time of war; the surveyors of the United States, for the purpose of ascertaining and section-

izing the land within the jurisdiction of Mississippi and Arkansas; and, it is not in consonance with fact that the three would all have made identically the same mistake with regard to the channel. Indeed, in 1830 actual measurement across the chute by the surveyors who sectionized Township 21 Range 8 West of Bolivar county, Mississippi, gives the distance between the mainland and the Island as not over 528 feet. This, it must be remembered, is from bank to bank of the Island, without regard to any sand bars that may have existed in between, which in turn corroborates the statement of Mr. Downing that the chute about the middle of the Island was little over 100 yeards wide.

I respectfully submit that it is unquestionably proven beyond a shadow of a doubt that the main channel of the Mississippi river was west of Island 76 in 1817. For a more particular discussion of the testimony and of the maps corroborated by Mr. LeVassuer's map of 1881 and 1889, see *supra.*

(*b*) *Even in case the Court should hold the western boundary of Mississippi to be the eastern bank of the Mississippi river, the boundary would extend to the eastern bank of the main channel of said river for purposes of navigation and hence to the western bank of Island 76 including said Island within the territorial jurisdiction of the State of Mississippi.*

This necessarily follows: If the river is the boundary, certainly the commonwealth of the State of Mississippi and the inhabitants thereof were to have the right of navigation up and down the river. It must necessarily be presumed that Congress legislated with this intent. At that date water transporation was

practically the entire transportation, and it cannot be presumed that some chute from the river that might be full at high water mark was to be the boundary of the State. Certainly, the most that the Complainants can claim is that the boundary of Mississippi did not extend beyond the law water mark. At low water mark the river or channel bank would be the Island's western bank, and hence within the territory of the State of Mississippi.

Handly v. *Anthony, Supr.*

I do not extend the argument because I deem it settled that the middle of the main channel of the river is the boundary of Mississippi, but simply refer to the above to show that even if such is not the case and the contention of the Complainants is admitted, still on that contention and of necessity, the Island was within the territory of Mississippi at that date.

(c) *The jurisdiction of Mississippi once having attached, it remained fixed independent of any changes in the channel of the Mississippi river from one side to the other of said Island subsequent thereto.*

This is settled by the Supreme Court of the United States in the cases of

Missouri v. *Kentucky, Supra,* and
Indiana v. *Kentucky, Supra.*

In case this was not the law, and the boundary followed the shiftings of the navigable channel of the river, this case would be settled immediately, as it is now an admitted fact that the main channel of the river is west of Island 76 and that said Island is attached to the main shore of Mississippi.

2. *The Appellees admit that the Act of Congress of* 1836 *admitting Arkansas into the Union fixed its eastern boundary as the middle of the main channel of the Mississippi river, meaning thereby the navigable channel of said river, but hereunder they assert.*

(a) *The main channel of the Mississippi river in* 1836 *when the State of Arkansas was admitted into the Union was west of Island* 76, *and that said Island never became a part of the territory of Arkansas.*

The above propositions are allegations of fact and depending upon evidence which clearly establishes that the channel was west of the Island at said date. Certainly the Complainants do not establish it east of the Island earlier than '39; and the channel having been fixed west of the Island in 1821, it is presumed, under the law of continuance to remain until the contrary is shown. Indeed, carrying this out, we have the statement of Mr. Downing that in '33 the Mississippi channel was very narrow, having fallen in very little since 1830, when it was only a little over 100 yards wide.

(*b*) *That independent of where the channel was in* 1836, *it was west west of the Island in* 1817. *Said Island at the latter date became a part of Mississippi, and has remained under the territorial jurisdiction of said State until the present day.*

For an elucidation of this proposition, see the discussion as to the facts, *Supra.*

It also refers to the case of

Missouri v. *Kentucky, Supra,* and
Indiana v. *Kentucky, Supra.*

3. *Respondents deny that usucaption and prescription as generally asserted is a positive rule of international law, whereby one nation can acquire territory of right belonging to another;* but assert that said rule is merely a rule of evidence aiding in the construction of treaties or the ascertainment of the true and ancient boundary.

In an examination of the above proposition I have made an exhaustive research into the authorities on international law, covering the statement made by the majority of text writers, that a nation may acquire property by usucaption and prescription, in an attempt to find whether there was such a rule in force between nations taking the effect of a positive rule of international law; and if so to find what constituted its limitations and the rules governing its application.

The more modern publicists seem to assume the existence of a positive rule of international law; that usucaption and prescription is one of the means of acquiring property by a nation; and we find Wheaton stating:

> "Independently of these sources of title (referring to Conquest, Treaty and Discovery) the general consent of mankind has established the principle that long and uninterrupted possession by one nation excludes the claim of every other. Whether this general consent be considered as an implied contract, or as a positive law, all nations are frequently bound by it; since all are parties to it; since none can safely disregard it without impuning its own title to its possessions; and since it is founded upon mutual utility and tends to promote the general welfare of mankind."
>
> Wheat. International Law, pages 304-5.

It would seem from the paragraph in the above quotation—"Since none can safely disregard it without mipuning its own title to its possession, etc.," that Wheaton refers to immemorial prescription, of which we will speak hereafter. Reading this in connection with

> "The exclusive right of every independent state to its territory and other property is founded upon title originally acquired by occupancy, conquest or cession, and subsequently confirmed by assumption arising from the lapse of time or by treaty or other compacts with foreign states."
>
> Wheaton International Law, page 303.

When we find that he states that writers have questioned whether perscription applies between nation and nation, and further find nothing more on the subject—nothing by which we can find any rule to apply the so-called principle of prescription—we naturally wonder whether any such principle of international law exists; and if so, what are its limits.

Glenn, Hall and Lawrence are equally vague on the subject, a few pages at most being devoted to a discussion of it, and nothing whatever given by which we can discover any rules to apply the principle to any state of facts existing in any particular case. Mr. Dudley Field, in his proposed International code suggests a period of fifty years for a prescription; but this is a suggestion only, and has no effect or force as law; nor has any length of time been ever set whereby usucaption would take effect.

Falling back to the writers on the subject through Vattel, Creasy, Von Marten, Kluber, Phillmore, Puf-

fendorf, Crotius, and others, we are free to say that after a very careful analysis of the subject, we deny the existence of any such rule of international law as prescription in the sense of time and possession giving title short of *immemorial prescription.*

In the beginning of the examination we find ourselves enmeshed in a maze of metaphysical discussion chiefly of an academic nature, seeking to ascertain what should be the law of nations rather than a statement of what is the law of nations. In order to extricate ourselves from this maze of philosophical inquiry, it becomes necessary to begin at the beginning so far as we are able and follow the matter to a conclusion, when I believe we will find the true rule as it exists today and always has existed. For this purpose we need not go into a discussion of the right of private property in land—a right which does not exist, according to such philosophers as Henry George and Spencer; and even Vattel says:

> "Nature has not herself established a private property over any of Her gifts, and particularly over land; and She only approves of its establishment for the advantage of the human race."

Whatever may be meant by that we do not know; nor does he give any proof that Nature approves any such appropriation. Personally, the writer holds with Henry George, that there can be no private property in land, but that it is the gift of Nature to all mankind.

But though much has been written and much sought to be proved from nature and the law of nature, we are not to consider the philosophy of a principle of positive municipal law, but to examine whether any such prin-

ciple exists as a positive rule of international law. * * * The Romans were the first who sought to establish any positive title to land by reason of possession for a time. This doctrine of private law had its origin in the Twelve Tables, and was designated usucaption and prescription; and under the Twelve Tables possession and use of movables for one year, and of immovables for two years worked an usucaption. Vattel defines usucaption as,

> "The acquisition of domain founded on a long possession, uninterrupted and undisturbed,"

that is to say, an acquisition solely proved by its possession; and quotes Wollf's definition:

> "An acquisition of domain on a presumed desertion,"

of which he says,

> "His (Wolff's) definition explains the manner in which a long and peaceable possession may serve to establish the acquisition of domain."
>
> Vattel, Law of Nations, 186.

In Mr. Poste's edition of Gaius, usucaption is defined as,

> "The acquisition of the right by prescription on the part of the acquirer by his strictly defined possession during a certain number of years."
>
> Poste's Gaius, page 161.
>
> "Prescription in the Roman law deprived the owner of his right of action, while usucaption transferred the ownership to the possessor."

This seems to be the real distinction between usucaption and prescription.

Poste's Gaius, page 581.

> "Usucaption, signifying the proprietary title which was acquired by long possession in cases

where the possessor honestly believed himself to be the lawful owner, although he could not prove his legal title."

Creasy on International Law, 249.

Puffendorf in his Law of Nature and Nations, states:

"It belongs to our present design to inquire likewise concerning that method of acquisition by which he who hath gotten possession of what was really another's by a just title and with honest intentions, and hath also held it for a considerable time without being disturbed or opposed, obtains the full property of the thing thus possessed, so as to extinguish all the rights and legal claims of the former owner. This the Roman law terms usucaption, because the thing is, as it were, taken and confirmed by long use or possession. * * * The word prescription in the sense of the same letter imports strictly that plea, demurrer or exception, by which the person thus in possession invalidates the claim of the first proprietor,"

and he further defines prescription as,

"The acquisition of a property by means of long possession continued to the term of years fixed by the law."

Puffendorf, page 439.

"Prescription is the exclusion of all pretentions to a right; an exclusion founded on the length of time during which that right has been neglected,"

"Or, according to Wolff's definition,

'It is the loss of an inherent right by value of a presumed consent.' "

Vattel Law of Nations, page 186.

"It would seem that in the beginning title by usucaption necessitated *bona fides* in the original of the title, while prescription did not; but Jus-

tinian, under the influence probably of the Canon law made the *bona fides* in the case of prescription also necessary, and fixed the term of years for usucaption and prescription to run at thirty years, and the Canon law afterwards improved on the civil law, requiring a perpetual good intention."

Puffendorf, Chapter 12, para. 3, Mr. Barbeyrac's Code, 582.

The Roman law variously fixed different dates when usucaption would give title, differing in cases of movable and immovable property; beginning with the Twelve Tables fixing one and two years, and finally settling under the law of Justinian at a term of thirty years. Thus these rules of private law were in the nature of statutes of limitations, whereby a right of action was barred after a certain time. These rules, of course, applied to that class of property subject to usucaption. It is important to note here that certain classes of property were not under the civil law subject to be acquired by usucaption, and time had no effect upon title.

This is especially to be noted here, as it will play an important part in the discussion that is to follow.

"Among these are Public Places, Things that belong to the Public, What is Due to the Treasurer, and the Princes' Demesnes."

Puffendorf, Book 4, page 440, Mr. Barbeyrac's Code.

Just as now Statutes of Limitations do not run against the State.

It is well also to note here that the civil law rule of usucaption and prescription is different from pre-

scription as we know it at common law, for the only limitation to prescription at common law is the time when the memory of man runneth not to the contrary; the time of legal memory being fixed at Rich., 1 (1189). And also, prescription at common law applies only to incorporeal hereditaments; no title could be acquired of land; and corporeal substances by prescription, because more certain evidence may be had.

Blackstone's Commentaries, page 265.

Thus, the rule of usucaption and prescription in private civil law being understood, the reasons given for such rules are well known and fixed rules, which various authors have attempted to trace the to the law of nature, which seem founded on reason and justice deducted from the assumed premise of the right or private ownership in property.

The question, however, is not the origin of usucaption, nor the justifiability of its enforcement as affecting private law—a question now largely historical and academic, due to our statutes of limitations; but is a question of public law affecting the rights of sovereign states, and as such involves matters materially different, for as between nations there is no general law-making power governing their relations. But international law is the outgrowth of treaties and compacts between nations, which for its enforcement is based rather upon their consent than upon any positive rule of conduct, crystalized into a law.

Also, it is well to bear in mind in this examination: We are not discussing what should be the law of nations when they by mutual consent establish a parliament of men—a federation of the world to regulate

the relations existing between them: But what is the recognized rule of law now existing and in force between nations. Whether a nation can acquire property by prescription has been a matter of dispute among the learned for many generations,—a discussion of more interest from an academic standpoint than from any practical purpose it may serve until such time as the international court, so devoutly to be wished, is established.

The authors which I have examined seem in the main to content themselves with discussing whether such a law derived from the law of nature best comports with the peace and welfare of mankind, prevents wars, and settles conflicts, and would enure to the greatest happiness of the human race. So it is that Bentham, than whom a greater man never discussed these subjects, prepares a plan for the perpetual peace of mankind; and other philosophers dreamed their dreams and joined the great majority; and yet the boom of the cannon is still heard, the clash of the sabre smites the air, and men suffer and die in the endless conflict of nations.

Amongst the great minds who discussed this question is Hugo Grotius. In his great work, "The Rights of War and Peace, including the Law of Nature and of Nations," he attempts for the first time to collate the laws of nations, and reduce them to some positive rule. It is asserted by text writers that Grotius holds that prescription and usucaption is a law of nations. In the translation I have examined he does not take such positive ground, but gives illustrations in which time and possession have been used as an *argument* against the claim of another nation.

In Chapter 4 at page 290 of Campbell's edition of 1814, he undertakes to discuss title by Occupancy, Possession and Prescription. Of this chapter it is necessary for me to state that Mr. Campbell failed to translate the whole chapter, stating that "the translator proceeds from the 4th to the 9th chapter of the second book of the original, the intermediate chapters being chiefly a repetition of the author's former arguments respecting the rights of seas and rivers and other kinds of dominion, and that relating to the rights of persons being so fully treated in the first volume of Judge Blackstone's Commentaries, it seems unnecessary to give them in the present work." It is unfortunate that the translator saw fit not to give here the entire work since Grotius is quoted by Puffendorf, Phillimore and others, as holding that prescription gives the right of title to property to nations.

At paragraph 1 of the chapter he says:

> "A great difficulty arises here respecting the right to property by uninterrupted possession for a certain time, for though time is the great agent by whose motions all the legal concerns and rights may be measured and determined, yet it has no actual power of itself to create an express title to any property. Now, those rights were introduced by the civil law, and it is not their long continuance but the express provisions of the municipal law gives them their validity. They are of no force, therefore in the opinion of Vasquez (Contro. C. Illustr. Lib. to C. 51 N. 18) between two independent nations or sovereigns, or between a free nation and a sovereign, between a sovereign and an individual who is not his subject, or between two subjects belonging to different kings or nations. Which, indeed, is true, and is actually the case, for such points relating to

> persons and things are not left to the law of nature but are settled by the respective laws of each country. As the unqualified admission of this principle would lead to great inconvenience and prevent disputes of kings and nations respecting the points of territory from ever being adjudged, in order to eradicate the seeds of perpetual warfare and *confusion, so repugnant to the interests and feelings of every people, the settlement of such boundaries is not left to the claim of prescriptive right, but the territories of each contending party are in general expressly defined by certain treaties.*"

Now here is a clear statement of Grotius quoting Vasquez with approval:

> "Which indeed seems true, and is actually the case, for such points relating to persons and things are not left to the law of nature, but are settled by the *respective laws of each country.*"

And in the paragraph which follows, he distinctly disapproves applying prescription between nations. He then proceeds to argue the question, and quotes two instances, as follows:

> "And the Lacedaemonians, we are informed by Isocrates, laid it down for a certain rule admitted among all nations that the right to public territory as well as to private property was so firmly established by length of time that it could not be disturbed, and upon this ground they rejected the claim of those who demanded the restoration of Messena." (Pages 295-6.)

He further states:

> "Sulpitius, speaking against Antiochus proved how unjust it was in him to pretend, that because the Greek nations in Asia had once been under the subjection of his forefathers, he had a right to revive those claims and to reduce them again to a state of servitude and upon this subject, two his-

torians, Tacitus and Diodorus, may be referred to, the former of whom calls such obsolete pretentions 'empty talk' and the latter treats them as 'idle tales and fables.' With these opinions Cicero in his second book of offices agrees, asking, what justice there can be in depriving an owner of the land which he has for many ages quietly possessed."

Grotius then continues and bases the right to property by prescription upon the presumed abandonment of the owner by reason of his failure to exercise any right over the same or to make any claim therefor for so great a while; and while the argument seems inferentially to apply to nations, he does not particularly say so. Upon questions of length of time he gives no direct point, but at page 309 states—

"Now, as time immemorial considered in a moral light seems to have no bounds, silence for such a length of time appears sufficient to establish the presumption that all claim to a thing is abandoned, unless the strongest proof to the contrary can be produced. The most able lawyers have properly observed that time, according to the memory of man is along a hundred years, though probably it may not fall far short of that space, for an hundred years is a term beyond which human existence seldom reaches; and a space which in general completes three ages or generations of men. The Romans made this objection to Antiochus, that he claimed cities which neither he, himself, his father nor his grandfather had ever possessed. (Page 309.)

"Perhaps it may be said that this matter does not rest upon presumption only, but that it is a rule introduced by the law of nations that uninterrupted possession against which no claim has been asserted will naturally transfer such property to the actual possessor. For it is most likely that all nations by consent get their sanction to

such a practice as conduces to their common peace. The term 'uninterrupted possession,' therefore, has been very properly used to signify as Sulpitius says in Lib. 'that which has been held by one uniform color of right without intermission,' or, as the same author in another place calls it, '*perpetual possession that has never been called in question.*' For a transitory possession creates no title, and it was this exception which the Numidians urged against the Carthaginians, alleging that as opportunity offered sometimes the kings of the Numidians had appropriated to themselves the disputed possessions which had always remained in the hands of the stronger party." Page 318.

Thus it would seem that if Grotius meant to state that prescription was a law of nations, he meant to refer to immemorial prescription, though he indicates that a time not far short of an hundred years might be sufficient. At the end of the chapter is to be found the following:

"It is an inquiry of importance whether the law of usucaption and prescription, if it prevailed in a prince's dominions, can be applied to the tenure of the Crown and all its prerogatives. Many legal writers who have treated of the nature of sovereign power according to the principles of the Roman civil law seem to affirm that it may be so applied. *But this is an opinion to which we cannot accede in its full extent, for to make a law binding upon any one, it is requisite that the legislators should possess full power.*" * * * "*It certainly is not to be compared with other things; it so far surpasses them in nobleness of its aim, and the dignity of its nature; nor is any civil law to be found which either does, or designs to comprehend sovereign power within the rules of prescription.*"

It might be well to ask how prescription can run

against a nation in the case of another nation, and not in the case of an individual; and as Grotius rules that prescription is not based upon the law of nature, holding with Vasquez, but upon a positive rule of legislation, how it could apply between parties for whom there is no parliament to legislate, and no tribunal to enforce its decree, is beyond the mind of man to comprehend.

The next thing that we have to consider, is Puffendorf, and we find after discussing usucaption and prescription as a rule of the civil law, he attempts to extend it to international law by inference. Thus he says at page 448:

> "From hence it appears that though two were subject to no common law besides that of nature and of nations, may allege against each other's claim a long uninterrupted and honestly obtained possession, and so much the rather as public possessions cannot be disturbed without much greater confusion and danger than private, though it must be confessed that in controversies between princes and states it is frequently not altogether unnecessary to appeal to prescription, since the right of the possessor may, or at least should, *be deduced more solidly from the foundations.* * * * Thus likewise Soliman, the great Turk would often often say that he had a right to the city of Rome, as being the lawful successor of Constantine, who had removed the imperial city to Bizantium; yet in the most noble examples upon record you will find that besides *the argument of long continued possession, some title or other capable of producing a sovereignty has been at the same time alleged.* Thus Isocrates under the person of Arcadius, showing in the first place that the Lacedaemonians became masters of Messena by the title of just war, afterwards brings in the length

of possession as a kind of secondary and inferior proof."

Puffendorf, 44i-9.

Thus we see that thus far neither Grotius nor Puffendorf assert that prescription is a law of nations, but inquire into the matter of whether it should be or not. In fact, Grotius doubts the advisability of adopting it, and Puffendorf asserts that there should be a juster title than time, and in fact, that in one instance at least time is used only as a sort of secondary proof to some other claim of title. In fact, possession for a great length of time seems to be understood by Grotius and Puffendorf to be merely used as *an argument to substantiate a right otherwise, or on other grounds asserted.*

Phillimore discusses the subject of prescription, and seems to be one of the first to lay down as a positive rule that prescription applies between nations; and yet when we refer to what he says, we cannot but have grave doubts as to whether or not he means *immemorial prescription, and does not refer to any particular time short of immemorial prescription giving title.* He states in volume 1, page 361 of his International Law:

"It is true that some later writers on the law of nations have denied that the doctrine of prescription has any place in the system of international law, but their opinion is overwhelmed by authority at variance with practice and usage and with the reason of the thing." He quotes Grotius, Heineccius, Wolff, Mably, Vattel, Rutherforth, Wheaton and Burke.

"The practice of nations, it is not denied, proceeds upon the presumption of prescription, when-

> ever there is scope for the admission of that doctrine. * * * It is admitted, indeed, that immemorial prescription constitutes a good title to national possessions, but this is a perfectly nugatory admission, if, as it is sometimes explained, it means only that a state which has acquired originally by a bad title may keep possession of its acquisition as against a state which has no better title. * * * It is perhaps the difficulty attending the application to nations of this technical part of the doctrine which has induced certain writers to deny it altogether, but incorrectly, for whatever the necessary lapse of time may be, there unquestionably is a lapse of time after which one state is entitled to exclude the other party. In other words, there is an international prescription, whether it be called 'immemorial prescription' or by some other name."
>
> Pages 362-3, Phillimore's Int. Law, Vol. 1, 3rd Ed., 1879.

And further he says:

> "The period of time as has been repeatedly stated, cannot be fixed by international law between nations, as it may be by private law between individuals; it must depend upon varying circumstances; but in all cases these proofs would be required." (Page 367.)

Thus, while Phillimore holds that prescription is a rule of international law, what he seems really to mean, though he denies that is the case, is that immemorial prescription upon which all of the nations of Europe really claim their title, because when he asserts there is no time fixed by which property belonging to one nation would accrue to another, the only time in the nature of things that can accede, is that time when the other nation can make no proof of its title. There is no tribunal before which a nation can be brought to

bar in such an instance, and no rules to be enforced by such a tribunal. It would depend in each case upon the consent of the nations whether the question of boundary would be referred, and upon what terms, and unless the using nation consented to prescription running against it, certainly there would be no rule of prescription, and, on the other hand, no nation would consent where possession had been long continued to refer the matter to any tribunal for decision.

Vattel likewise holds prescription a rule of international law, or seems to hold so, but in reality, what Vattel says is that it should be recognized as international law. He begins his argument on the subject to show that usucaption and prescription is derived from the law of nature, as follows:

> "Nature has not herself established a private property over any of her gifts, and particulaly over land; she only approves of this establishment for the advantage of the human race. On this ground then it would seem absurd to suppose that after the introduction of domain and property the law of nature can secure to the proprietor any right capable of introducing disorder into human society." (Page 187.)

Proceeding from these two on proven premises, he argues to his own satisfaction and establishes in his own mind that usucaption in private law is based upon the law of nature; and in truth and in fact, we know its origin to be in the Twelve Tables of the Roman law. He then states at page 190:

> "After having shown that usucaption and prescription are founded in the law of nature, it is easy to prove that they are equally a part of the law of nations and *ought* to take place between

different states; for the law of nations is but the law of nature applied to nations in a manner suitable to the parties concerned."

And he then adds:

"As to *immemorial* prescription, what we have said respecting it is sufficient to convince every one that it *ought necessarily to take place between nations.* Nay, more, as by virtue of that law of nations in all doubtful cases supposed to stand on a footing of equal right in treating with each other, prescription when founded on long undisputed possession ought to have its full effect between nations without admitting any allegation of the possession being unjust, *unless the evidence to prove it is very clear and convincing indeed; for without such evidence every nation is to be considered as a bona fide possessor.*"

"Since prescription is subject to so many difficulties, it would be very proper that adjoining nations should by treaty adopt some rule on this subject, particularly with respect to the number of years required to found the lawful prescription, since the latter point cannot in general be determined by the law of nature alone."

These last quotations conclusively show that prescription has no bearing in the law of nations as an actual existing rule of action; that Mr. Vattel was really urging the establishing of such a doctrine between nations comporting as he believes with the law of nature. Phillimore in quoting Vattel seems to assume that he holds such a position, and it probably comes from that paragraph in his work in which he says "prescription of many years standing as well as usucaption is then established by the voluntary law of nations"—a statement really at variance with all the rest of his argument. Creasy and the other

writers above mentioned, and some others, seem to hold to the same opinion.

Before discussing the contrary view and the view which I shall establish beyond a question of a doubt to be the law between nations, not from the comments of text writers or academic discussions of publicists, but from actual custom or practice of nations in their boundary disputes and the decisions of their commissions, I deem it expedient to here state what I consider to be the cause of the attempt to ingraft into the law of nations prescription, and why it remains an attempt only and must so remain for a great while to come. Before beginning this, however, it is worthy to note that with the exception of one or two instances cited by Grotius, in which Cicero argues against the injustice of disturbing a possession of ages, and some other *nation* urges that it is unjust to disturb a possession of some three generations, there is not in all of the text writers a single concrete instance given of any action between any nations whereby the rule of prescription has been put in force. They refer to no boundary commission, to no contest between them adjudicated by any boundary court, in which the question of prescription was used and was *decided to be a law of nations.* They refer to no treaty whereby separate nations agreed to the enforcement of such a rule of law; basing their whole contention upon usucaption and prescription in the private law thus arguing that it proceeds or is in accordance with the law of nature, and thus arguing that because it is in accordance with this supposed law of nature and supposedly best comports with the welfare of mankind

it should be adopted as a law of nations. But nowhere do they show that in practice it has been so adopted.

Returning to the question of the origin of this contention of prescription as applicable to nations, we must be reminded that Rome dominated the world with her legions, and her laws were scattered over the face of the then known globe; and when Christianity became the great ruling force of Europe, its seat being in Rome, the laws of that nation permeated all of the other nations, and were adopted more or less by them as models upon which to base their system, thus effecting the Peace of Westphalia, which was really the beginning of our modern international system. It was found the title of all European nations to their territory depended upon immemorial possession except in certain instances ratified by treaty. Therefore, to justify their title it was attempted to base it on the doctrine of prescription adopted from the civil code. But the two had nothing in common since the possessor of anything invariably has title to it unless a superior title can be shown, and in the case of immemorial prescription no title superior to possession could be shown; but while in this sense *immemorial* prescription became a doctrine ingrafted into international law, it never extended beyond that for the simple reason that the time at which a prescription would run could not be designated.

First, then: There was no general legislative tribunal for all of the nations which could fixe a time. Second. There was no tribunal with power to enforce its decrees; and while publicists might say one

hundred years, as suggested by Grotius, or fifty years, as suggested by Field, should work a usucaption and prescription, the assertion remained only a suggestion, having no force of positive law.

Necessarily, the usucaption and prescription of the civil law failing for this reason, another idea was sought to be ingrafted by the side of this, which idea was designated as "acquiescence." But here they were met by the same trouble; what length of time should acquiescence run to give title. So likewise this fell to the ground. But as now the boundaries of nations had become fixed by treaty based upon immemorial possession, and any changes in their boundaries were effected by treaty of war or purchase, the doctrine of acquiescence became a force for one purpose,—admittedly for one purpose only, *and that is, as an aid to the interpretation of treaty.*

Premising this much, we now come to consider those writers who hold that there is no such thing as a nation acquiring property by usucaption and prescription, leaving out, of course, immemorial prescription. And first we must mention Vasquez, referred to by Grotius and quoted with approval, *supra.* The famous Father Dupuy, Counsel and Library Keeper to the King of France in a discourse entitled "Whether prescription is of force among sovereign princes" is another who denies the doctrine of prescription. Von Marten, Kluber Lampradi and Mamiama are others who hold like views. The only one of these authors whose work I can find is Von Martens, and from him I quote as follows:

(Von Martens Law of Nations, being the Science

of National Law, Covenants, Powers, etc., founded upon the Treaties and Customs of Modern Nations in Europe; and we find in Chapter 3 of Prescription, Sec. 1, on this subject the following questions are started, viz.:)

"Ought prescription to be considered as a particular sort of right among nations, and as a means of acquiring or losing a right? And does it make a part of the universal law of nations, and is it admitted as such by the powers of Europe?"

A nation may certainly renounce a property or right to possessions in undertaking actions to prove such renunciation and in losing its rights it may authorize another to acquire it; but the main object is to know whether abstaining from certain property or rights or whether keeping silence voluntarily and knowingly while another makes use of them can deprive a nation of such property and rights and authorize another to seize on them irrevocably. This is what we have in view when we examine whether prescription has any weight or not among independent nations, abstaining from the use of a right or keeping silence, while another makes use of it can never have the force of consent except we are obliged to speak of or make use of a right, and this obligation cannot exist among independent powers, according to the universal law of nations in its strict sense. As long as there is no acknowledgment, simple presumption, founded on silence or inaction cannot deprive us in spite of ourselves of our rights for the time to come. Prescription does not, then, constitute a natural right, and if the welfare or convenience of nations requires them to admit it, if it be presumed they have consented to it, still we are as far from the object as

ever, as long as the time required for losing or acquiring by prescription remains undermined, and as long as the universal law of nations cannot determine it with precision.

In the Code he states as follows:

> "If possession be immemorial, if there exist no possession anterior to it, it is undoubtedly sufficient to set aside all the pretentions of others. But this is not the effect of prescription founded on the duration of this possession; *it is the consequence of the natural impossibility for any other to prove a right better than that of the possessor.*"

In Sec. 2 he states:

> "Were prescription considered with respect to the positive law of nations; it is true the powers of Europe often urge the right of prescription; they seem *even to acknowledge the force of it in having recourse to declarations* in order to preserve their rights. However, first, these same powers often refuse to acknowledge it at other times. Second, sometimes they understand by prescription extinction of a right which has been decidedly renounced by actions which proved the consent. Third, Declarations are often employed as additional means of securing a right while the possessor would not, however, think of losing without this precaution. Fourth, Declarations are sometimes employed to hinder certain actions which a nation has been obliged to undertake from being looked upon as amounting to a tacit consent as inconvenient, whether general or particular, as no custom even has determined the time necessary to establish a right by prescription. Prescription, properly speaking, ought not to be considered as a source of the positive law of nations, at least among the sovereign states of Europe."

It is but natural to suppose that the other authors

mentionedf above as holding the same view as Professor Von Martens argue along like lines, and the force of Von Martens' conclusion is not so much based upon his argument as to whether or not prescription comports with the law of nature, as upon that part of his argument in which he states positive facts; that it has never been adopted as the universal law by the nations of Europe; that it is asserted sometimes, by one nation, and again denied by it, as best suits its purposes; but no time has been fixed and no tribunal established whereby the matter may be determined: It still remains not a positive law of nations, which, indeed, is a statement of a fact rather than an argument based upon theory.

There is one other matter which deserves mention here: it is, that Mr. Hosack, in his work on the rise and growth of the law of nations as established by general usage and treaty from the earliest time to the treaty of Utrech does not mention in the course of his entire work the question of usucaption and prescription; and it is reasonable to suppose that had there been any such doctrine to be derived from the custom and usage of nations that he would certainly have mentioned the subject.

In like manner Mr. Kent in his elaborate Commentary on International Law, makes no reference whatever to any principle of the law of nations whereby territory may be acquired or lost by usucaption or prescription.

These two authors seem to be dealing with international law as it is, irrespective of international law as it should be, deriving their law not from supposed

logical deductions from the law of nature or from metaphysical discussions, but from the treaties and usages of nations themselves; and the omission of these authors to include any such doctrine within their works, taken in conjunction with the fact that no one of the publicists who advocate the principle refer to any custom or treaty whereby the rule is enforced, we must necessarily conclude from a consideration of these matters alone that in the law of nations, prescriptions as a law of title short of immemorial prescription, does not exist. It will be well also to refer to a statement of Mr. Kent's, in which he says:

> "Puffendorf has always held the first rank, but his work, largely as it enters the principle of international law, is of very little practical value in teaching us what the law of nations is at this date. (Whatever merit it may have as a treatise on moral philosophy as an exponent of international law it has few or none.) To the same limbo of forgotten authors may be remitted the works of Wolff, Burlamaquis, Rutherforth."
>
> Kent's Com. Int. Law, page 735, Abdy's Edition.

Having thus considered the text writers and publicists on the subject, it becomes now important to examine some of the disputes upon boundary, to ascertain whether or not the rule of prescription is applied in actual practice as between nations. Unfortunately, I have been unable to get at all, or many of the boundary controversies. The Venezuelan dispute I have in part, but as it is largely without index, I am unable to find any controversy in that dispute whereby the question of prescription was raised. So much of the index of contents as is given does not re-

fer to any point of the kind. But I have been able to get the conclusions of three boundary disputes between the United States and Great Britain: One, the Behring Sea controversy; one the Passamoquoddy Bay controversy, and the other the Alaskan Boundary controversy.

> International Law Digest, Vol. 1, Mr. Upshur, Secretary of State to Mr. Everett, October 9, 1843, M. S. Instruction Great Britain, states

the law with regard to time to be as follows; and I believe the correspondence accrued out of the Oregon Boundary question:

> "Now, mere lapse of time independent of legislation or positive agreement cannot of itself either give or destroy title. It gives title only so far as it creates a presumption equivalent to proof that a title exists derived from higher sources; it destroys title only because it creates a like presumption that whatever the title may have been it has been transferred or abandoned. Thus: It merely creates evidence, and nothing more. It creates a presumption equivalent to full proof, but it differs from proof in this: that proof is conclusive and final, whereas presumption is conclusive only until it is met by greater proof or by a stronger counter-presumption."

In the proceedings of the Commission under Article IV of the Treaty of Ghent relating to the title to the islands in Passamaquoddy Bay, the agent of Great Britain concludes his argument as follows:

> "A total silence continued to be observed by the government of the United States with respect to all these islands now in question excepting * * * until the year 1807, notwithstanding the public notoriety of the facts of British settle-

ment and of the exercise of British jurisdiction over all the islands, Grand Manan, as well as those in Passamaquoddy Bay, with the above exceptions; and notwithstanding these facts were in evidence before the Commissioners of the two nations under the fifth article of the Treaty of 1794, as before mentioned * * * the simple uncontroverted fact that all these islands now in question upon the publication of the Treaty of 1874 were in the possession of his Majesty * * * with the tacit consent and acquiescence not only of the Government of the United States but of the State of Massachusetts * * * must to any unprejudiced mind more strongly evince the understanding of both nations at that time with regard to the title of that island under that treaty, and can be considered in no other light than as a mutual contemporary exposition of the true intent of the treaty in that regard. * * * To an unprejudiced mind also * * * the further uncontroverted fact that under this mutual understanding of the treaty, the United States as well as the State of Massachusetts in the words of the late agent of the United States before quoted, remained silent spectators of the settlements and improvements made by his Majesty's subjects upon these islands during a period of more than 23 years with regard to one of them, and more than 30 years with regard to all of the others, will justly furnish an argument that the United States have no claim at this date to any of those islands."

Page 129 of Mem. of Brit. Agent, date June 11, 1817, M. S. U. S. Copy in State Dep't in Washington.

In all this it is to be noticed that in this Passamaquoddy Bay controversy possession by acquiescence or prescription was not attempted to be used against

the United States, in any sense of prescription running against the United States, and barring title to the property; but the argument was that in view of the fact that the possession and settlements were made by the British prior to the time of the treaty, and at the time of the treaty, and even until after the treaty; that the possession was an argument to be used against the United States; with regard to its *understanding of the meaning of the treaty*, the treaty alone, and its proper construction being enough to govern the rights of the parties, independent of the question of time or possession.

Before going further into the Boundary Commissions and their determination upon these questions, it will be well first to examine some of the rulings of the Supreme Court of the United States, to ascertain whether or not that Court has ever applied the rule of prescription contended for by the text writers to international questions in the sense of time alone limiting the right of a nation; or, in other words, whether there is any such thing as a statute of limitations running against independent sovereignties.

While it may be that I have not examined all of Decisions of the United States Supreme Court bearing upon this question, it has been my intention to do so; but I have examined all of the cases that I understand have been cited by counsel opposed as authority for sustaining their contention that prescription is applicable between nations, and an understanding of these Decisions places them exactly in line with the view contended for herein: that is to say, there is no such thing as prescription operating between independent sovereignties.

The first case to be considered is that of

Rhode Island v. *Massachusetts,* reported in 4 How., at page 591,

and the syllabus of this case contains the following:

> "For the security of rights, whether of states or of individuals, long possession under a claim of title is protected, and there is no controversy in which this great principle may be invoked with greater justice and propriety than in the case of disputed boundaries."

Standing alone, the syllabus would be taken to mean probably that the court held that prescription would apply as between nations in cases of disputed boundaries; but an examination of the facts of the case and of the opinion itself, leaves this matter hardly a matter of doctrine, unless it is to apply to the case in controversy. In which event, indeed, it will then be found the limitation to be placed upon the rule is that contended for in the statement of the agent of Great Britain in the Passamaquoddy Bay controversy above referred to.

The facts in the case of

Rhode Island v. *Massachusetts,*

shortly stated, are about as follows:

There were grants to each of the States from the Government of Great Britain. Over 200 years had elapsed since the charter of Massachusetts was issued, and over 180 years since the Rhode Island charter. (Those years refer back from the date of the Decision in 1846.) In 1702 commissioners were appointed by the colonists of Massachusetts and Connecticut to settle the boundary between them, which accordingly was done by the commissioners in 1710.

Massachusetts and Rhode Island, by Act of their General Assemblies, appointed commissioners to determine this line, and the line was determined by them at that date. Again in 1716 and 1717 commissioners were appointed who in 1718 designated the boundary line between the Colonies, which boundary line was accepted by both Massachusetts and Rhode Island, by Act of their General Assemblies.

It is admitted that since that date Massachusetts has claimed and exercised jurisdiction over the land up to the line designated, and while some protests from time to time were made by Rhode Island nothing definite was done by her to offset the decision of these commissioners. In addition, it was very doubtful what construction should be placed upon the original grants, the State of Rhode Island claiming that a misconception had been placed upon the charter. With regard to this the Court says:

> "The misconstruction of the charter in going more than three miles south of Charles river is earnestly insisted on by complainants' counsel. If the words of the charter were clear and unequivocal in this respect there would be great force in this argument; it would be decisive of this controversy, unless controlled by other facts and circumstances in the case."

He then shows that the construction of the charter, or the beginning of it is doubtful, and with regard to that states the following:

> "It would therefore seem that the charter may be construed favorably to the Respondents; that the construction of the Complainant is not a forced one is admitted, and the conclusion naturally follows that men of equal intelligence may differ in opinion as to the true meaning of the instrument.

That Massachusetts more than two hundred years ago construed the charter as her counsel now construe it is clear, and the facts proved authorize the conclusion that the construction was not for many years opposed by Connecticut or Rhode Island and at no time by Plymouth." (Pages 633-634.)

Counsel further urge that a mistake had been made by the commissioners in settling a running line of 1711 and 1718, and the Court says:

"It may be a matter of doubt whether a mistake of recent occurrence committed by so high an agency in so responsible a duty could be corrected by a Court of Chancery; except on the clearest proof of the mistake, it is certain there could be no relief. No treaty has been held void on the ground of misapprehension of the facts by either or both of the parties." (Page 634.)

The Court further says:

"Fraud is not charged, and we have only to inquire into the alleged mistake. From the nature of this supposed mistake it is scarcely susceptible of proof." (Page 636.)

And goes on to show that the proof is not made showing the mistake, stating that if it occurred in the first boundary commission, it is hardly possible that it should have occurred in the second boundary commission. The Court then further says:

"This dispute is between two sovereign and independent states. It originated in the infancy of their history, when the question in contest was of little importance. Unfortunately steps were not early taken to settle it in a mode honorable and just and one most likely to lead to a satisfactory result. There is no objection to the joint commission in this case, as to their authority, capacity or the fairness of their proceeding a mistake is all

that is laid against their decision; and as has been shown, this mistake is not clearly established either in the construction of the charter or in the location of the Woodward and Saffery station. But if the mistake were admitted as broadly and fully as charged in the bill, could the Court give the relief asked by the Complainant." (Page 637.)

In 1754 William Murray, then attorney general, * * * was consulted by Connecticut whether the agreement with Massachusetts with regard to the boundary in 1713 would be set aside by a commission appointed by the Crown, to which Mr. Murray replied:

"I am of the opinion that in setting the above location (boundary) the Crown will not disturb the settlement of the two Provinces so long ago as 1713. I apprehend his Majesty will confirm their agreement, which of itself is not binding on the Crown, but neither Province should be suffered to litgate such an amiable compromise of doubtful boundaries. If the matter were open the same construction already made in the case of Merrimac River must be put upon the same words in the same charter applied to Charles River as to Jacks Brook. It is impossible to say whether it is a part of Charles River without an exact plan and knowing how it has been requted. (Pages 637-8.)

From the settlement referred to up to the time this opinion was given 41 years only had elapsed, and if that time was sufficient to protect that agreement, with how much greater force does the principle apply to the agreements under consideration, which are protected by the maps of more than a century and a quarter.

More than two centuries have passed since Massachusetts claimed and took possession of territory up to the line established by Woodward and Saffery. This position has ever since been

steadily maintained under an assertion of right. It would be difficult to disturb a claim thus sanctioned by time, however unfounded it might have been by its origin. The possession of the Respondent was taken not only under a claim of right, but that right is the most solemn that ever has been admitted by the Complainant and by the other Colonies interested in opposing it. Forty years elapsed before a mistake was alleged, and since such allegation was made, nearly a century has transpired. If in the agreement there was a departure from the strict construction of the charter, the commissioners of Rhode Island acted within their power, for they were authorized to agree and settle the line between the said Colonies in the best manner they can as near agreeable to the Royal Charter as in honor they can compromise the same.

Under this authority can the Complainant insist on setting aside the agreement, because the words of the charter were not strictly observed? It is not clear that the calls of the charter were deviated from by establishing the station of Woodward & Saffery, but if in this respect they so deviated, Rhode Island was not the last one, for those commissioners were authorized to compromise the dispute." (Page 638.)

The Court then follows this with a statement relied upon by the Complainants:

"Surely this, connected with the lapse of time, must remove all doubt as to the right of the Respondent under the agreement of 1711 and 1718." (Page 638.)

Thus, indeed, the ruling of the Court is entirely correct, because two sovereign states have a right by treaty to settle and determine disputed boundaries between themselves, and these settlements when made are as binding as the agreement between individuals;

and when in addition to the agreement it is ratified and approved by its General Assemblies, and it has been confirmed by lapse of time, the court will not go behind the agreement or attempt to investigate into its correctness; and especially is that the case when the original charter or conveyance that was to be settled is of a doubtful nature.

But this decision does not assert or maintain, and cannot be said to be authority for the proposition that time alone gives title.

The next Decision of the Supreme Court of the United States which might properly be considered as throwning some light upon this question is the case of

Missouri v. *Kentucky,* 11 Wall., 395.

This was a case involving the boundary between Kentucky and Missouri relative to the title to Wolff Island, located in the Mississippi River. Missouri claimed the ownership of the island as early as 1782 and exercised jurisdiction over it. Kentucky up to the time of the rendering of the Decision in 1817 and ever since it had been a State maintained jurisdiction over the island and possession thereof; it was embraced within her surveys in 1837, and the people therein paid taxes, exercised the elective franchise under her laws, and a resident of the island was elected to represent her in the General Assembly; and in 1828 her courts exercised jurisdiction over the island.

> "The jurisdiction fully established by acts such as these," says the Supreme Court, "has never been disturbed.

On the other hand, it states, that Missouri if it

claimed the island to be within her boundaries, has never attempted to subject the people to her laws, or to exercise jurisdiction therein. If there was proof, it states, that the island by legislation had been included in the limits of New Madrid County, then service of a writ on a solitary settler there by the sheriff would be an exercise of sovereign power on the part of the State; but in the absence of this proof there is nothing to connect the State with the transaction. Taking this statement, with the additional statement of the Court, there is nothing in this record which shows that Kentucky has not maintained for a long course of years possession and jurisdiction over the teritory and the people who inhabit it. (Page 403.)

It would seem that if prescription was a rule of international law, that it would have been brought to bear in this controversy. But instead of that, we find that the determination of the Court is not based upon the ground of time or of acquiescence, but that the Court seeks alone to ascertain where the Mississippi River ran at the date of the admission of Kentucky into the Union; and after ascertaining from the facts in the case that the river ran west of Wolff Island at that time it determines that Kentucky is entitled to the island.

This Decision, as we will see, is based entirely upon a determination of the facts as to where the channel was, and indeed the Court he says:

> "It follows, therefore, if Wolff Island in 1763 or in 1820 or at any intermediate period between these dates was east of this line, the jurisdiction of Kentucky might fully attach to it." (Page 404)

The next case of the Supreme Court relied upon by counsel for Complainant, and probably more so than any other, is the case of

Indiana v. *Kentucky,* 136 U. S., 479.

In this case an island in the Ohio River was in controversy, and the facts in the case show that Virginia had maintained possession of it and exercised jurisdiction during her ownership, and that after the formation of the State of Kentucky she continuously exercised jurisdiction over the property, taxing its inhabitants, serving her writs upon the island, legislating in regard thereto, and that there had been two decisions—one of the United States Supreme Court and several of the State of Kentucky holding the island within the jurisdiction of Kentucky at an early date; that the property had been surveyed as a part of the State of Kentucky, and that as early as 1806 a United States survey of Indiana had been made which did not include the island within the territorial limits of Indiana.

In addition to this the Bill of Indiana admitted that ever since its formation as a state the State of Kentucky had held possession of and exercised territorial jurisdiction over the island excluding the State of Indiana therefrom. On this state of facts the Court says:

> "The question then becomes one of fact: Did the waters of the Ohio pass between Green River Island and the mainland of Indiana when Kentucky became a state and her boundaries were established. * * * It is clear, we think, from the court testimony that at an early date after Kentucky became a State the channel between

the island and the mainland of Indiana was often filled with water the whole year and sometimes to the width of 200 yards; and that water passed through it of more or less depth the greater part of the year until down to a period subsequent to the admission of Indiana into the Union." (Page 506.)

The Court then comments and says:

"But above all the evidence, etc., there are some uncontroverted facts in the case which lead our judgment irresistibly to a conclusion in favor of the claim of Kentucky. It was over seventy years after Indiana became a state before this suit was commenced, and during all this time she never asserted any claim by legal proceedings to the tract in question. * * * The long acquiescence and the exercise by Kentucky of dominion and a jurisdiction over the island is more potential than the recollection of all the witnesses produced on the other side. Such acquiescence, etc., can only be regarded as a *recognition of the right of Kentucky too plain to be overcome except by the clearest and most unquestioned proof.*"

It then goes on to say:

"Potential as are the considerations drawn from long silence and acquiescence of Indiana, her affirmative action is not the less persuasive in favor of Kentucky's claim.

It admits that in 1804 Congress authorized a survey into townships. * * * Under this Act a survey was made of the land in the vicinity of Green River Island in December, 1805; and in April, 1806; and it did not include the island in the territory north of the Ohio but treated the bank of the Bayou or channel north of the island as the bank of the river. The notes of this survey were given in evidence and show conclusively that the officers of the Government at that time did not consider the tract in controversy as form-

ing any part of the territory of Indiana, but did consider that the waters of the Ohio running north of it made the tract now in controversy an island of the river. This survey, from the time it was made, has been regarded as establishing the fact that the southern boundary of Indiana lies north of the island. (Page 512.)

In addition to this the State appointed commissioners to designate the location, and also the State of Kentucky did so; and these commissioners ran the line identically in accord with the survey of 1806."

In addition the Court says:

"We have spoken of the character of the testimony introduced on the part of Indiana, and of the fact that it does not touch upon the condition of the channel above the island previous to her admission as a state to the Union." (Page 517.)

"All the testimony is to be taken with many allowances for imperfect recollection from the confusion of many witnesses of what they saw with what they heard, or what they knew of their own knowledge with what they learned from the narrative of others. The clear and admitted facts we have mentioned, corroborated as they are by nearly everything of record to represent them, leave on our minds a much more satisfactory conclusion than anything derived from oral testimony before us."

And then proceeds to state:

"But such long acquiescence of Indiana and Kentucky, etc., forbids at this date, after a lapse of nearly one hundred years any disturbance of the State in her possession of the island and jurisdiction over it.

"*Our conclusion is that the waters of the Ohio river when Kentucky became a state flowed in a channel north of the tract known as Green River Island, etc.*" (Pages 518-519.)

Thus it will be seen that though the jurisdiction of Kentucky was established by constant acts on its part,—legislative, judiciary, and otherwise; and Indiana had acquiesced in such a jurisdiction for a period of over seventy years, the Court bases its opinion upon the fact of where the channel of the river was at the date of the admission of the State of Kentucky, and uses the argument of possession and acquiescence in connection with the other facts merely as a means of establishing *the fact of where the boundary actually was.*

Thus showing in this opinion that the rule of the Supreme Court is not that prescription gives title, but that long possession and acquiescence is evidence to be considered in connection with other facts, as to where the true boundary was.

The next Decision of the Supreme Court is that of

Virginia v. *Kentucky,*

and was likewise a case where the commissioners of each state in 1802-3 under the legislative approval and sanction ran a boundary line between these two states, which boundary line was admitted by both states, and which boundary line until about the year 1892 was acquiesced in by both states and jurisdiction exercised accordingly. The Court declines to set aside this boundary upon the ground that the State—quoting Judge Storey in *Poole* v. *Flueger,* 11 Pet., 185-209:

> "It is a part of the right of sovereignty belonging to independent nations to establish fixed disputed boundaries between their respective territories; and the boundaries, so fixed by compact between nations become conclusive upon all the subjects and citizens thereof and bind their rights,

> and are to be treated to all intents and purposes as the true and real boundary. * * * It is a right equally applying to the states of the Union, unless it has been surrendered under the Constitution of the United States." And he decides that it has not been so surrendered.

Thus, indeed, this case, instead of being decided upon the ground of acquiescences, or of prescription, is decided upon the ground that the boundary fixed by the commission was the true and ancient boundary between the states, and that the treaty would not be disturbed now.

On the other hand, we have a Decision in

Belding v. *Hebard,* 103 Fed. Reporter, 533.

It is held that a boundary once having been established between two states by joint commission, that boundary could not be changed by the action of state authorities in the recognition of any other line, unless it would create a mutual estoppel, and he states what would not create such an estoppel.

This decision will be considered further in this brief, at the proper subdivision of the argument.

We thus see that there is nothing in the decisions of the United States Supreme Court on the question of international law which asserts the doctrine of prescription as giving title between nations. On the other hand, time is used alone as an ingredient of proof in conformity with the rule laid down in the Passamaquolly Bay controversy.

But leaving these Decisions for the present, and coming to the last Boundary Commission between

The United States and Great Britain,

involving the question of the Alaskan boundary, and

being the last utterance of an international court upon the subject, whatever was determined there must be of great weight, and in fact necessarily conclusive upon the question. The reports of this boundary controversy cover some seven volumes. The case was argued before the Commission by Sir Robert Finey, Mr. David T. Watson, Dr. Christopher Robinson, Mr. Hannis Taylor, Sir Edward Carson, and Mr. Jacob M. Dickinson. The facts in the case show conclusively that Russia had held possession up to the boundary claimed by the United States prior to the purchase of the United States in 1867 and extending back to the treaty of 1825 between Great Britain and the United States; and that the United States after her purchase maintained jurisdiction through legislative acts of Congress, her war. and navy department, and subsequently under her civil jurisdiction constantly thereafter to the boundary line occupied by Russia under the treaty of 1825.

On the other hand, that England exercised no jurisdiction during all of this time and acquiesced in the jurisdiction exercised by Russia and by the United States, claimed by the United States 73 years and admitted by Britain 63 years, Britain claiming that ten years prior to the claim of notification to the United States that she had claimed the title to a part of the property in controversy.

The kind of possession shown by the United States was actual possession in the sense of legislation by Acts of Congress; of securing the allegiance of the native tribes within the territory; of executing men for crimes within the territory in question; and va-

rious other acts, chief among which was claiming by her maps the boundary contended for. On the other hand, it was admitted that all of the maps of Britain, official and otherwise recognized the same boundary as that contended for by the United States; that the lease of the Hudson Bay Company of the property in question by Russia was called to the attention of Parliament, and that Russia did not have jurisdiction to make the lease.

Under this state of facts, certainly it would seem that if acquiescence and prescription were a part of the law of nations it would have been contended for by the United States in this controversy as settling the question.

It is proper here to state that the matter submitted for the consideration of the tribunal was to ascertain the true boundary under the treaty between Great Britain and Russia; and probably therefore the question of prescription and acquiescence was actually excluded from the consideration of the court; but that does not do away with the position taken by America and taken with British authorities, and admitted by the court during the argument.

In the written argument of the United States, beginning at page 201, the United States urges:

> "It is respectfully submitted that it has been conclusively shown that for over seventy years before the present claim of Great Britain was preferred, Russia and the United States exercised jurisdiction over the waters and coasts in dispute; that throughout that period Great Britain never tried in any way to assert any sovereignty over any part of them, and that by her official maps she concurred in the claims made notoriously

and continuously by the official maps of Russia and the United States, and that the boundary line in dispute ran from the head of Portland Canal around the heads of all the bays and inlets."

The argument then quotes the argument of *Indiana* v. *Kentucky,* Supr. 136 U. S. Reports, beginning with that part of the decision which says it was over seventy years after Indiana became a state, etc. The argument also quotes at length from the Agent of Great Britain concluding his argument in the Passamaquoddy Bay controversy, which has been quoted above in this brief in part; and the United States' argument concludes with the following:

"The right of Great Britain to the territory in question was as perfect and complete as it could ever be from the moment the Treaty of 1825 with Russia was executed. If from that time down to '98 she failed to assert the right now set out, and acquiesced in the exercise of dominion and jurisdiction upon the part of Russia and the United States, *such acquiescence should be conclusive as to her understanding of the Treaty of* 1825."

The argument there being, that possession and acquiescence could only extend to and be evidence of the meaning of the treaty or the understanding thereof by both parties at the time it was executed, and extended no further.

At page 345 of Vol. 6 of the Alaskan Boundary dispute, Sir Robert Finley states as follows:

"Now I submit as a proposition of international law that possession and even long possession as between nations would not of itself confer a title. I mean if a territory is admittedly the territory of A however long B had been in possession, A would be entitled to turn him out and

to assert jurisdiction. I am speaking of two nations as A and B; but if there was a dispute as to whose territory was the long possession would be a most material element in endeavorng to determine which of the parties to the dispute was in the right; and it is from that point of view and from that point of view only that I submit possession can be looked at. There is no rule in international law which corresponds to the statutes of limitations. What we have in international law is that if the right to the territory is in dispute, then long possession is a matter to which the tribunal which is to determine that dispute may very properly have regard."

But he states, going on:

"A consideration of that kind is excluded in the question before the tribunal."

He then goes on:

"I would say, first, that there is no statute of limitations between nations which bars a right otherwise good. Second, in the absence of special stipulations where it is a question of disputed territory, you may very properly have regard to the fact of long possession; but, thirdly, in the present case all such considerations are put out of view by the language of the treaty. You can look at those facts only so far as they tend to show the effective understanding of the parties with regard to it."

Whereupon the President of the Commission, who was Baron Alverstone, Lord Chief Justice of England, stated, at page 346:

"Perhaps it might be convenient, and I just mention it at present. * * * I think you have put it quite correctly, Mr. Anthony; but Lord Hannon, in the Bering Sea Arbitration expressed a clear opinion in the course of the Arbitration, that prescription properly so-called, found no place as between nations."

"Sir Robert Finley: No.

"The President: But he did point out that estoppel and acquiescence be important features.

"Sir Robert Finley: Yes.

"The President: And then further, I think it appears in the course of the argument that he thought prescription had no application where the question was the construction of a bargain or contract between two parties. I only mention that because I believe you have stated the law, if I may say so with respect in concurrence with Lord Hannon and the view there laid down."

From this we see the opinion of the attorney for England, and also of the president of the tribunal, who was the lord chief justice of England and who certainly, in view of the position he was occupying at this time, must have thoroughly investigated the matter.

But now let us come to the contention of the United States, at page 618, Vol. 7. Mr. Hannis Taylor, in concluding his argument for the United States, states, at page 319:

"But the difficulty which beset prescription at the outset has beset it all through its history, and that is, that as there was no common law-maker among nations nobody could fix the time that a prescription should last as a statute of limitations. Publicists could say fifty years ought to be long enough to make a prescription, but as there was no common sovereign of all the nations who could legislate and fix it, prescription was always a vague and ineffective doctrine of international law, because nobody could define the length of time that it had to last."

He then states:

"So in that condition of things the publicists of the world removed the difficulty by a very

wise expedient: They built up alongside of prescription a new doctrine which they called acquiescence. The great cardinal characteristic of acquiescence is that it does not require any particular length of time to perfect it. It depends in each particular case upon all the circumstances of the case. *The primary value of acquiescence is its value as a means of interpretation.*"

He then quotes in his oral argument the decision of *Indiana* v. *Kentucky*, and the argument of the Agent of Great Britain in the Passamaquoddy Bay controversy, and concludes:

"I claim that there is no rule in the whole range of international law; no one upon which the peace of nations depends; no one upon which the security of system depends, which demands such strict enforcement at the hands of an international tribunal as the one which directs it to *construe treaty by the act of the parties emphasized through their acquiescence.*"

Judge Dickinson, in his argument for the United States, states, after stating the kind of possession, in an extract from the Argument in behalf of Great Britain in the proceedings of the Commission, in Article I' of the Treaty of Ghent relating to title in the island of Passamaquoddy Bay:

"*I do not read this for the purpose of suggesting that there could be any acquiescence operating as an estoppel;* it can be looked to as an evidence of the interpretation put upon the matter by the parties. The position assumed in the argument of the case by the counsel for Great Britain which I quote is entirely sound. It is exactly the position in which we place ourselves in this case in regard to what we have styled acquiescence."

He then quotes that part of Passamaquoddy Bay argument which I have quoted above, and says:

> "Here are the emphatic words most strongly evincing the sense of both nations at that time with regard to the right to these islands under that treaty, and can be construed in no other *light than as a mutual contemporary exposition of the true intent of the treaty in that regard.*"

And at page 924:

> "I say that the possession of the United States of all that territory throughout that time without any quesion on the part of Great Britain was an inerpretation put by Great Britain upon the Treaty of 1825, and that under the terms of this treaty under which you are acting, those acts ought to be looked to by this Tribunal, and that there is nothing in this case that should have greater weight in controlling your judgment upon the question of *interpretation.*"

Before closing the discussion of this part of the brief, we desire to quote from Chancellor Kent, as follows:

> "The sole source of the law referring to international law, the fountain from which it flows, whether in its customary conventional or judicial customary *shape* is the consent of nations."
>
> Kent's Com. Int. Law, page 4.

We also desire to quote Bentham, as follows:

> "Natural right is often employed in a sense opposed to law. * * * We cannot reason with fanatics armed with a natural right which each one understands as he pleases. * * * Which is inflexible at the same time that it is unintelligible, which is consecrated in his eyes like a dogma, and which he cannot discard without a cry. Instead of examining laws by their results, instead of judging them to be good or bad, they consider

them with regard to their relation to the so-called natural right. That is to say, they substitute for the reason of experience all the chimeras of their own imagination."

Another great thinker who has probably influenced the course of law as much as any other man excepting alone Bentham, Austin, in his Principles of Jurisdiction Determined, Vol. 1, page 222, says:

"Grotius, Puffendorf and other writers on the so-called Law of Nations, have fallen into a similar confusion of ideas. * * * They have confounded positive international morality or the rules which obtained amongst civilized nations in their mutual intercourse, with their own vague conceptions of international morality as it ought to be, with that indeterminate something which they conceived it would be if it conformed to that indeterminate something which they called 'the law of nature.' Professor Von Martens of Gottingen, who died only a few years ago, is actually the first of the writers on the law of nations who has seized this distinction with a firm grasp. The first who has distinguished the rules which ought to be received in the intercourse of nations or which ought to be received if they conformed to an assumed standard of whatever time from those which are so received, endeavored to collect from the practice of civilized communities, what are the rules actually recognized and acted upon by them, and give to these rules the name of Positive International Law."

I have now followed the doctrine of prescription from the beginning to its conclusion with an immense amount of labor, considering the short time I had at my disposal. I have examined every authority upon which I could lay my hands, for the purpose of ascertaining the real and true rule of international law

with regard to this subject. To reiterate here, I lay down as a proposition that cannot be disputed,

FIRST,—

There is no such doctrine in international law applying to the acquisition of territory as usucaption and prescription; that there is no such thing in international law as a statute of limitations or anything in the nature of it.

SECOND,—

That in international law there is a doctrine of acquiescence, properly understood, which is simply used as a means of interpreting treaties between nations, and has no effect whatever by reason of lapse of time, otherwise than proving the intentions of the parties.

Having thus shown that prescription does not apply, before proceeding to the argument with regard to whether there has been possession on the part of Arkansas and acquiescence upon the part of Mississippi, it may be well to state here, that it is admitted that there has never been any boundary commission or treaty on the part of the State of Arkansas and the State of Mississippi seeking to ascertain their boundaries; that each has merely claimed the territory to the extent of its limits, authorized by Congress; and that the only question to be determined in this case is, where the true boundary was, which is a question of fact, *i. e.*, where was the channel of the Mississippi River and the Respondents' contention that it was *to be* West of Island 76, is established by all of the

evidence, thus placing the property within the jurisdiction of Mississippi.

(a) Arkansas, under the Federal Constitution, did not have power to acquire and hold territory beyond the boundary defined by the Act of Congress admitting it into the Union, without the consent of Congress, or as an evidential aid of the true and ancient boundary.

Sect. 3, Article IV of the Constitution of the United States, is as follows:

> "New states may be admitted by the Congress into this Union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the Legislatures of the states concerned, as well as Congress."

Sect. 10, Article I of the Constitution of the United States:

> "No state shall without the consent of Congress * * * enter into an agreement or compact with another state or with a foreign power."

In construing Section 3, Article IV of the Constitution, we are practically compelled to do so without the assistance or guide of any prior constructions to aid us, at least upon the particular point to which we now make reference. We must therefore examine the words themselves to ascertain what is meant by the Constitution.—The inhibition is very positive; no new state shall be formed or erected within the jurisdiction of another state; nor shall any state be formed by the junction of two states or parts of states. Wherefore it follows that any boundary of a new state established, adjoining one already admitted into the

Union, cannot extend beyond the boundary of the old state; and that, after the Act of Congress admitting it, the new state itself cannot extend its territory into the older state, except by consent of the Legislatures of the two states and of Congress.

These propositions seem perfectly clear, and if they are clear, the thread of analogy being spun, it is easy to follow it:

Mississippi was admitted into the Union in 1817 with her boundary fixed and determined as the middle of the main channel of the Mississippi River and as the Complainants contend or at the low water mark of the main channel of the Mississippi River,—either of which constructions place Island 76 within the territory of Mississippi provided the channel of the Mississippi River ran west of Island 76 at that date. This fact we believe has been established by record evidence beyond the shadow of a doubt. In fact, the only evidence in the case which can be considered evidence so-called establishes the channel west of the island; and therefore we assert that the boundary of Mississippi in 1817 included within the territorial limits of that state Island 76. Not only is this the fact, but Mississippi claimed the island as a part of her territory and the maps of that state included it within her bounds.

> See Field Notes and Map of 1830, wherein the island is sectionized as a part of Township 21, Range 8 West in Mississippi.

Arkansas was admitted into the Union in 1836. It must be presumed that Congress had notice of the territorial limits of the State of Mississippi and did not

intend to violate the above Section of the Constitution of the United States by attempting to place within the territorial limits of Arkansas any part of the territory of the State of Mississippi; and in addition to Congress having notice of that fact, Arkansas itself had notice of the boundaries of Mississippi by reason of its claim to Island 76 held out to all the world by the maps of the State in its land offices at Jackson.

Therefore: Since at the date of the admission of Arkansas, Island 76 was a part of the State of Mississippi it became impossible for Arkansas to have acquired Island 76 or have extended its jurisdiction into the boundaries of Mississippi without the express consent of its own Legislature as well as the Legislature of the State of Mississippi. And under this Section of the Constitution the only means whereby it could have acquired territory within the State of Mississippi was by Act of Legislature of both States approved and consented to by the Congress of the United States.

This was not done, and therefore Arkansas did not acquire any rights to Island 76 at the date of its admission into the Union. The question then arises,—Has she acquired any claim since, or could she acquire any? In no way does she assert, or even is it pretended, that she has asserted claim to Island 76 prior to 1846,—29 years after the boundaries of Mississippi were established, and 16 years after Island 76 had been sectionized as within the boundaries of Mississippi, and 10 years after the admission of Arkansas, and then the only claim to the Island is by reason of a survey made by Mr. Pellum at that date. No Act of the Legislature of Mississippi refer to the Island—;

and yet, under the Constitution of the United States, it is requisite before a State can acquire property in another State, that it shall be done by and with the consent of the Legislatures of the two States consented to by Congress,—a constitutional provision which cannot be violated directly,—cannot be violated indirectly.

If, in 1836, Arkansas had no title to Island 76, by reason of its being within the boundaries of the State of Mississippi, it could not have acquired title except by Act of the Legislatures and approval of Congress at that date. If that was the case at the time,—Arkansas cannot now claim title to the Island, by reason of claim to possession for a time,—for time can have no effect in procuring a necessary prerequisite to the acquisition of property. Time, alone, will not justify, will not justify doing away with a constitutional provision,—and it is necessary for Arkansas to show to-day an Act of the Legislature, and an Act of the Legislature of Mississippi, granting her the territory claimed within the limits of the State of Mississippi, as it would have been at the date of her admission into the Union.

Indeed, under the two Clauses of the Constitution above quoted, it is doubtful if a State can extend its jurisdiction beyond the boundaries designated by Congress, without the consent of Congress,—whether it extends its boundaries into another State or not. The only means whereby it could do so, would be by the consent of Congress, for Congress has only authorized it to act as a State within the limits defined by the Act; —and as a State is positively prohibited from entering into a treaty with a foreign power,—or into a compact

or agreement with another State, except with the consent of Congress,—there is no method whereby it could acquire any additional territory. It is possible the consent of Congress might be presumed, if it could be shown the matter had been brought to its attention.

(b) That the claim of the doctrine of Usucaption and Prescription short of immemorial prescription, cannot apply between two States, except where there has been a boundary commission of the States whose boundaries are to be affected, held by, and with the consent of Congress,—or as evidential aid of the true and ancient boundaries.

We have shown in the foregoing argument that usucaption and prescription is not a law of Nations, except as to immemorial prescription, and except as an aid to the interpretation of treaties affecting boundaries between nations. As within the states of the United States immemorial prescription is not possible, the only other application that the pretended rule would have, would be to aid to interpret a boundary commission, or as an aid to discover where the true and ancient boundary existed. If we take the above clauses of the Constitution, with the interpretation upon them for which we contend as correct, to apply, or attempt applying, prescription as a means of a State acquiring additional territory within the boundaries of another State, it would violate the terms of the Constitution itself, reading therein the now ingredient of time, and permitting a State to do indirectly that which was prohibited to it directly.

And therefore—, Unless the consent of the Legislatures of the two States, and either the direct, or the

implied consent of Congress can be shown at this date, Arkansas can have no claim to Island 76—, Act of the Legislatures of the States being essential to establish this title at this date, as it would have been to establish it at any date prior thereto.

(C) Arkansas never had such possession of Island 76, or exercised such jurisdiction over the territory of said Island, as to warrant the invoking of the pretended doctrine of usucaption.

(D) Mississippi never relinquished or abandoned its possession so that the so-called doctrine of prescription could be invoked against her. But, on the contrary, she held possession of said Island from 1817 to the present day; and Arkansas has not claimed possession for a sufficient length of time to obtain title under the pretended action of usucaption and prescription.

The above proposition may best be considered together, and involve chiefly a consideration of the facts as established by the record in the case:—

FIRST.

As to the Possession of Mississippi.

In 1817 Mississippi was admitted into the Union. At that date her rights to her territory became fixed under the Act of Congress admitting her into the Union. From that date until 1830 there was no positive act on the part of Mississippi showing whether or not she claimed possession of Island 76 in the Mississippi River as a part of her territory, by reference

to said Island by name, except her claims of all territory within the limits granted to her by Congress. In fact, at no time has the State of Mississippi made any special legislative act in which Island 76 was particularly mentioned as being within her bounds. But in 1830 the United States Surveyors in platting the territory of Mississippi, platted Island 76 as a part of Township 21, Range 8 West, in Bolivar County—, Sections 36 and 37 of said Township and Range. The field notes of said Plat were sent to the proper departments, and a map was made showing that Mississippi claimed at that date Island 76 to be within her boundaries, and exercised such possession and control over it as she exercised over land in any other part of the State. She maintained therefore this possession without any question on the part of any one for the space of 29 years, that is— from 1817 to 1846— and there is no proof whatever that she has ever abandoned or released, or sought to release her possession. In 1846, Mr. Pellum surveyed the lands in Arkansas for the United States Government, surveying Island 76 as a part of the State of Arkansas; but it must be remembered that this was Ten (10) years after the State of Arkansas had been admitted into the Union— during all of which time Mississippi held possession of Island 76, and exercised jurisdiction thereover. It must also be remembered that in 1827 McRee made a plat of Arkansas opposite this Island— said plat dated December 23rd, 1829, just prior to maps of 1830 of Mississippi— and did not include the Island as Arkansas territory, viz.—That at about the same date, the one State claimed the Island, and the other, then a terri-

tory, did not. Subsequent to Mr. Pellum's survey of this Island as a part of Arkansas, Mississippi, in 1852, applied for the lands as swamp lands under the Swamp Land Grants; and under this Act, the land was approved to the State as all other lands in the patent were approved of, and Mississippi by reason of the approval considered that the land had been given to her by the Swamp Land Grant by the United States. Subsequently, and in 1854, Mississippi patents the land to Mr. W. G. Ford.

We then see that from 1817 to 1854 Mississippi claimed title to Island 76 as within her territory unquestionably, and without any notice or idea of supposition that there was any claim or right upon the part of any one else to said property. From 1830 to 1854 a period of 24 years, she held possession, holding out to the world that she maintained her possession of said property by reason of her maps, showing the Island to be distinctly a part of Mississippi. Subsequently, and in 1855, the Governor of Mississippi is informed by private letter that Arkansas has some claim to the Island. Immediately the Governor, and in 1855, takes up the matter with the Department of the Interior at Washington, and continues with them the correspondence until 1859. The matter seems to be left in abeyance at this date the general opinion of all being that the property is a part of Mississippi, and not a part of Arkansas. There is nothing to show any acquiescence upon the part of Mississippi to the claim of Arkansas, nor in fact, is there any claim of Arkansas to said property except by reason of the Pellum survey, which sectionized the Island as a part of Ar-

kansas— that is, there is no affirmative act of the Executive and Legislative branches showing a claim of Arkansas to this land— but Mississippi had claimed since 1830, under the Benjamin Griffin survey.

Subsequently to this, and in the '60s, the unpleasantness which resulted in one of the greatest conflicts of arm known in history came about,—lasting until 1865,— during which time every controversy was in abeyance, and the business of war was alone attended to. And thereafter, and extending up to 1876, and later, "carpet-bag" rule prevailed—,the State being engaged in a political freedom. Subsequent to that, Mississippi appears to have taken no action in regard to the matter except by Acts of her Legislatures to maintain the full extent of her boundary, and to continue to hold the property as a part of her territory, maintaining its boundaries by designation, by plats, etc., within her Land Offices. It appears, however, that there is no proof of the Assessor of Washington County, or of Bolivar County, having assessed the land as part of the territory of the State; and in 1881— that is— within five years after the war with the 'carpet-baggers'—, this error is discovered, and by special Act of the Board of Supervisors of Bolivar County, the property is placed upon the assessment roll, and the statement is made, that in error the Assessor has heretofore failed to assess it. From that time on until the beginning of this suit, and since, Mississippi has continued to tax the Island as a part of her territory, has disposed of it to purchasers, and has maintained her maps and plats, showing that she continues to hold the property as a part of her territory. Indeed, within this

latter time, and in 1892, some 11 years after Mississippi has been taxing the property, certain ministerial officers of the State refunded the money on the *ex parte* application to purchasers who had purchased the property from the State of Mississippi, stating as a reason thereof, that the Island is within the jurisdiction of Arkansas. This last act will be discussed under the proper head, but can have no bearing whatever upon the question of the exercise of the possession of the State of Mississippi, or upon its claims to the territory, or upon the question of the acquiescence of the State in the claim of Arkansas for any length of time.

Now, then, let us see what Arkansas has done with regard to possession.

Arkansas was admitted to the Union in 1836. At that time as stated, Mississippi was holding the posses sion of the Island claiming it as a part of her territory, the McRee survey still on file had not placed the island in Arkansas and at the date of the admission of the latter state her maps and plats showed that her boundaries did not extend to or include Island 76; and Arkansas made no claim whatever to the property from 1836 to 1846—10 years after the admission of Arkansas into the Union as a state. In 1846, Mr. Pelham, finding that at that date the channel of the Mississippi runs east of Island 76, without investigation, or inquiry to ascertain whether the island had been platted before or was claimed as a part of Mississippi, proceeds to plat the island as a part of Arkansas; and this act of Mr. Pelham in 1846 is the inital act upon which the appellants claim that Arkansas has possession and exercises jurisdiction over Island 76. The legislature

of Arkansas takes no notice whatever of the island; nor does any officer of the state except in 1854 to apply for the land under the swamp land grant, just as Mississippi had applied for it in 1852. The only act on the part of Arkansas shown with regard to possession not shown by the state of Mississippi, is that from 1865 to 1881 Arkansas assessed taxes on Island 76, during the time that it is not shown that Mississippi did so. With this exception and the exception of her tax sales, which likewise took place in Mississippi, Arkansas has done absolutely nothing by which she is shown to have exercised jurisdiction over Island 76: Her legislature has not referred to it; her courts have not executed writs upon the island; her executive officers have not referred to the island as a part of the state; nor has she taken any special measures with regard thereto in any way different from those taken by the state of Mississippi. In fact the island has practically been uninhabited except for some occasional squatter during all the time until recent years; and indeed, now it is uninhabited except for some one probably lighting the United States Government light, or now and then in possession for the owners of the property.

Does this give any such possession, and do these facts give any such acquiescence on the part of Mississippi that can in any way be said to justify, under the laws as applicable to private individuals even the principle of prescription? It will be remembered that the Roman law, which was said to be applied to nations without a designated term of years, that an uninterrupted possession, or an uninterrupted acquiescence on the part of the other was necessary; and thus it

was that when Carthage claimed title against the Numidians, the reply was, "that sometimes one king held title and sometimes another, he who was the strongest holding the property." So it would seem in this instance that from 1817 to 1846 Mississippi held possession unquestioningly. No proof whatever of her relinquishing possession is shown, but from 1846 to the present time Arkansas has claimed and asserted jurisdiction and so likewise has Mississippi. In 1881 Mississippi likewise taxes the island and if we take from 1855, when Mississippi learns of the claim of Arkansis, to 1881 when she begins to tax, as acquiescence on her part, we find that only 26 years has elapsed—not long enough to give title at civil law even as between individuals in the case of usucaption and during which time Mississippi was asserting her title and in correspondence with the Interior Department, followed by the war. But it is idle to assert that any such possession on the part of Arkansas as is shown in this case can be urged as a prescription. The payment of taxes on the part of an individual attempting to establish it, is never allowed to show possession; nor can the assessment of taxes alone be shown as a claim to title or possession upon the part of the state. In the case of Massachusetts against Rhode Island actual possession and settlement was shown, the laws were executed, acts of legislature referred to the property in question, and the maintenance of the boundary to the lands in question. On the other hand Rhode Island likewise consented to the boundary as fixed for a large number of years, not attempting to exercise her jurisdiction beyond the line agreed upon by the Commission.

In *Indiana* v. *Kentucky* the State of Kentucky exercised its jurisdiction through its courts, by executing its processes, by assessment, by voting by its citizens, bringing suit within the U. S. Circuit Courts and State Circuit Courts, the property being determined by all of these courts to be within the jurisdiction of Kentucky. On the other hand, Indiana had never platted the property, had never claimed it as a part of her territory or exercised any possession of it or any control for over 70 years. * * * In *Missouri* v. *Kentucky* identically the same state of facts exist, with regard to the exercise of jurisdiction and possession by one State and the lack of exercise of jurisdiction and possession by the other. In the case of the boundary between Alaska and Great Britain the United States Government legislated with regard to the territory, executed its writs, demanded the allegiance of its inhabitants, maintained the line by its maps and executed criminals within the territory, and other acts showing that it maintained and held possession. Britain on the other hand admitted by its maps that the property was not claimed as a part of its jurisdiction and exercised in no way jurisdiction or possession over the territory.

Thus indeed in every case we find that it is essential that there should be some legislative act with regard to the claim of territory, some act connecting the sovereignty of the state with regard to its boundaries. It is only under the Constitution through the Acts of the Legislature that boundaries can be extended; and therefore it is only by the act of the Legislature itself that any claim of possession extending beyond its old

boundaries could give the state a claimed possession of property. Indeed, this matter is actually settled by the statement made in the foregoing part of this brief, where Mr. Upshur in writing to Mr. Everett instructions with regard to a boundary conflict between the United States and Great Britain, that time alone, independent of legislative act can be of no force in a prescription, which necessarily and of itself settles the question of whether the possession that Arkansas has exercised is such a possession as can be used against Mississippi, and further settles the fact that no time can run against the State of Mississippi on possession of such a nature.

There are three ways in which time exercises influence upon property:

First,—by the Statute of Limitations,

Second, by prescriptions, and

Third, by presumption of grants.

It is not pretended and is denied that a statute of limitations can run against the state.

It has been shown that usucaption and prescription does not apply in the case of a nation and especially as between two states, certainly not that prescription known at the common law which had reference only to incorporial hereditaments, and which extended "time out of mind," or to the time when "the memory of man runneth not to the contrary" established in law as I Rich. the I, 1189 A. D. Blackstone states the reason why prescription as known at common law does not apply to land: It is, that lands being conveyed in grant, there are more definite ways of showing the

original conveyors without the necessity of presuming a grant. Thus prescription at common law does not apply, and certainly usucaption as known at the Roman law does not apply, because no definite date or time is fixed for the running of the prescription. Indeed, if such were the case, the statute of limitations would be applied to a nation or sovereign state.

The only other method is that of presuming a grant; but no grant can be presumed in this case as having existed in favor of Arkansas because if such a one had existed it must have been a legislative grant, which could easily have been established, that is, it being established that Island 76 in 1817 was a part of Mississippi there can be no grant presumed from Mississippi to Arkansas and there is no pretension of even a grant. But, apart from these questions, and even admitting that the doctrine of usucaption and prescription would apply as in the case between individuals, the state has not brought itself by such possession or length of time of possession and by such acquiescence on the part of Mississippi to establish the fact. The only possession that could be claimed by the State of Arkansas would run at the most from 1859 until the possession was disputed by the State of Mississippi in 1881, which would be 22 years, from which must be deducted the years of the war. There is no case shown in which a prescription of 22 years as regards to nations is even held as conclusive on a treaty or construction of a treaty.

In the case of *Massachusetts* v. *Rhode Island* the time was over 200 years; in the case of *Indiana* v. *Kentucky* over 70 years; in the case of *Missouri* v.

Kentucky over 70 years; in the case of *Virginia* v. *Tennessee* over 80 years. And so the time itself is not sufficient; for even should we admit that the possession should be considered as running from '46 to the date of the institution of this suit, it would be only something over 50 years, and the shortest condition for such a rule even by the publicists is 50 years. Grotius and others claiming that it should be not far under 100 years.

We therefore submit that even if we admit the possession of Arkansas, which is denied, and the acquiescence of Mississippi, which is denied, that there has not run a sufficient time to apply the doctrine.

One other suggestion, and then I am through with this part of the question: It is this:

That since there has been no boundary commission between the states, nor any treaty, acquiescence on the part of Mississippi cannot apply, because the only thing that acquiescence could apply to would be as to the question of the construction of the treaty, or the understanding of the parties at the time as to where the true boundary was. On the other hand, the Assessors' act of assessing the land as a part of Arkansas can have no effect upon the claim of possession of Arkansas, because it cannot be presumed that the Legislature of Arkansas ever intended to hold property beyond the boundaries defined by its Act of Admission, or within the territory of another state.

The whole question, then, resolves itself to the one of determining where the channel of the Mississippi River ran in 1817, and that must be determined from

the evidence of the case; and we have shown and the Court has found that the channel of the Mississippi River at that date ran west of Island 76, as we believe conclusively and beyond the shadow of a doubt.

4. *The Respondents deny that the act of an executive officer can transfer title to property within the territorial jurisdiction of a nation or state, or change or effect the boundary of said state.*

In considering this question it is well probably to consider first the nature of the act by which the state is sought to be bound, and what the result of admitting the state bound by the acts of its officers in this case would be.

Under the form of a monarchial government the power to bind the nation with regard to territory, as well as most other matters, rests in the king, and in him alone is generally vested the power of making treaties with regard to the extension of territory and otherwise, with other nations. But there is an essential distinction between the principle governing a monarchy and that governing a republic: In a monarchy the king is the state, "I am the State," said Louis XIV. In a democracy the people are the state, and from them emanates all power, and under the Constitution of the United States all powers not delegated to the United States, are reserved to the separate states or to the people; and under the Constitution of the United States the treaty-making power is vested in the president of the United States and in the Senate, and therefore, all treaties must be approved by the Senate of the United States. In other words, this treaty-making

power is a political power vested not in the judiciary, not in the executive, but in the executive and legislative combined, under the direct terms of the Constitution of the United States itself. In the case of the various states this power is prohibited by the Constitution of the United States to the states except by and with the consent of Congress, and the power vested with the state Constitutions themselves is vested in the political powers of the state, and can be exercised only with the approval of Congress. Under the Constitution of Mississippi (Sec. 3 and 4 Constitution Miss., 1890), the legilature is the branch of government to which alone is delegated the power to settle boundary disputes or acquire additional territory; and under the Constitution of the United States the legislature of Mississippi could only do this in the case of the consent of some other power, and by and with the consent of Congress.

Thus, then, the only power in the state authorized by law to change the boundaries of a state to release territory or to acquire territory, is the legislature of the state, and any official seeking to act upon these questions directly or indirectly, would be violating the Constitution of the State of Mississippi, and his acts, contrary to law, would certainly not be binding upon the State.

The acts of the following officers are relied upon to establish, first, the possession of Arkansas, and second, the acquiescence of Mississippi:

First,—the act of the Assessor of Desha County, Arkansas, in assessing the property of that state for taxation.

Second,—the act of the Assessor of Mississippi in failing for a limited time to assess the property as within the State of Mississippi.

Third, the act of the Attorney General, the Auditor and the Governor of the State in making the refund to Curry & Hull, under a Section of the Code authorizing refunds in certain instances.

First, with regard to the act of the Assessors. In the case of *Schooner Fame* v. *Mason,* Circuit Court U. S. Reports, 147, United States Judge Story, delivering the opinion of the Court:

> "This was a case of a libel for violating certain of the revenue laws, the act of elicit trading being proved to be in Passamaquoddy Bay, the principal question was, whether they were done within the territorial limits of the United States or within the British waters. It appeared in evidence that there had been a sort of conventional understanding between the American and British collectors at Passamaquoddy, as to what line they would deem the true boundary of their respective governments."

The Court in his decision fixed the midway line between the island belonging to Great Britain and United States as the boundary line; and at page 152 says:

> "As to the line agreed upon by the collectors, it cannot for a moment be admitted as of any validity; they were not public agents entrusted with such negotiations, and their acts are not to be construed as indicating the sense of either government."

In *The People* v. *Roberts,* 155 N. Y., 508, at page 413, the Court says:

> "Thus, the single question presented seems to be: Whether the determination of an assessing and taxing officer, that an assessment made for

> one particular year should be canceled for the reason that the property was not subject to assessment, is conclusive upon succeeding officers against assessments for subsequent years upon the same property or franchise. Officers upon whom the duty of making assessments for the purpose of taxation is imposed, are independent public officers, possessing no jurisdiction as agents of the State, and for whose acts the State is not liable; nor is the State responsible for any mistake or misfeasance by them in the performance of their duty. The State imposes upon such officers the duty to perform certain distinct and definite acts. * * * We think that there is no ground for holding that the action of a mere assessing officer can determine that property is exempt from assessment for one year, and precludes the State as to the taxes imposed in succeeding years and prevents their other officers from complying with the clear and plain requirements of the statute."

Thus it will be seen that even though the Assessors of Arkansas and Mississippi had gotten together and had determined that Island 76 was in Arkansas, it would not have been binding upon the State either of Mississippi or the State of Arkansas. The Assessor of Arkansas, if he assessed property beyond the bounds of the state was exceeding his duty, and his act was of no authority whatever and could in no way connect the State in its sovereignty with it.

See

Missouri v. *Kentucky,* 11 Wall., Supr.

On the other hand, if the Assessor of Mississippi failed to assess property within the bounds of the State of Mississippi, he was violating his duty, and the State is in no way precluded by his action. Under the Constitution of the State of Mississippi the

boundary can only be changed by legislative action and hence there is no authority on the part of assessors to change it, and, as they could not do so originally, they could not do so with the assistance of time.

Third,—with regard to the act of Auditor, the Governor and the Attorney General of the State of Mississippi: They were acting under a special Section of the Code, which authorizes them in certain instances to refund money upon failure of title of lands; but this is an Act of Code, and must be construed in conjunction with the Constitution of the State of Mississippi, as the State of Mississippi in its Constitution has precluded any of its officers from changing its boundaries, the act in question cannot be construed so as to give the State officers when making a refund, the power of determining where the boundary of the State of Mississippi is, and their act can have no effect or be binding upon the State. Now, if the act itself is so construed it then becomes contrary to the Constitution of the State of Mississippi and of the United States, and is of no effect. It is a well settled principle of law that the state cannot be precluded by the laches of its officers from asserting any right or claim, nor is the state bound by the errors and mistakes of its officers in making settlements in its behalf, nor by the mistake or misfeasance of a tax collector in failing to make assessment or in making a wrongful one, the error being subject to correction by the officers' successors.

26 Am. and Eng. Ency. of Law, page 480, and cases cited in the Note.

It is hardly necessary to further discuss the ques-

tion of this refund in view of the facts, nor to to show that it can change the boundaries of the state of Mississippi, the constitution of the state preventing the officers of the state from such jurisdiction, and delegating that right alone to the legislature of the state; and certainly, as the act itself cannot estop a state from setting up its claim to title, it cannot be used in the question of the acquiescence of the state, because it occurred in only '92, when it was absolutely prohibited by the constitution, so far as affected its boundaries; and as these officers could not directly have changed the boundaries of the state by an act of theirs, they cannot indirectly do so.

5. *The Land Department of the United States cannot change the boundary between two states by the mere ministerial act of offering the land for sale, erroneously as within one state or the other.*

It would seem only necessary to state this proposition. The boundaries of the states are fixed by Congress and in the case of Mississippi, Congress accepted the conveyance of this territory for the purpose of making a state. The Congress is inhibited from making a new state within the territory of another state, and no state can acquire territory in another state without the consent to the two legislatures and of Congress and yet the contention is that the act of the Land Department in merely offering at Helena this land for sale is a claim that this act takes the island out of the jurisdiction of the state of Mississippi and places it within the jurisdiction of Arkansas, in other words that the mere ministerial act of an officer of the Land Department could do that which Congress

could not do. An examination of the facts in the case shows clearly how the error occurred. Pelham, in re-surveying the land in Arkansas in 1846 found that the channel of the river at that time was east of the Island 76 and surveyed same, sectionized it as a part of Arkansas. Upon its reaching the Land Office, without examining the matter, they place the land upon the market. An examination of the records would have disclosed to them the fact that the island had already been surveyed as a part of Mississippi. It was evidently carelessness on their part, and yet the contention is that this oversight has the effect of changing the boundary of the state. (See the opinion to the contrary of the various land Commissioners filed in te record in the correspondence.) And indeed, the proposition is too clear for serious consideration.

6. *The sovereign right of taxation belonging to a state is not defeated by the Federal Government patenting land within its territorial jurisdiction to a citizen in the state or a foreign state.*

This is axiomatic.

So long as Island 76 belonged to the Federal Government it was not subject to taxation. Immediately that the title left the government, it became subject to taxation by the state within whose boundaries it was. The island passed from the general government by its patents and became subject to taxation either in Arkansas or Mississippi. The appellants contend in Arkansas, the appelles, in Mississippi. Both parties claiming a tax title under the different states. The island, being in Mississippi, is not subject to taxation or ownership in Arkansas and the title from

Arkansas to the complainants is void. The court is without jurisdiction to decide the question but the very decision of the Court below that it is without jurisdiction, holds void the title of the appellants.

The suggestion is made, or the inference held out, that Island 76 was assessed in 1881 by collusion and that there has been some improper collusion on the part of the appellees in this case. This is not true. There is nothing in the record even squinting at it and the assumption is gratuitous and without foundation.

There is though, in the entire argument of the complainants below, appellants here, a constant effort to muddy the waters with technical and specious argument and we cannot better close this brief than by quoting from the profound Bentham:

> "Let us guard against the employment of figures in matters of jurisprudence. Lawyers will borrow them and turn them in fictions, amidst which all light and common sense will disappear, then mists will arise amidst the darkness of which they will reap a harvest of false and pernicious consequences."

We therefore respectfully submit that upon the facts of the case and upon every legal principle, the case should be affirmed.

Respectfully submitted,

ALEXANDER Y. SCOTT,
For Appellees.

J. M. MOORE,
CHAS. SCOTT,
E. H. WOODS,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 222.

WILLIAM MOORE ET AL., APPELLANTS,

vs.

R. J. McGUIRE ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

SUPPLEMENTAL POINTS FOR APPELLEES.

At page 69 of the brief for the appellants the position is taken that the boundaries between States were fixed by act of Congress, and for that reason the controversy directly raises a Federal question.

The court, however, is without jurisdiction in this instance for the following reasons:

First. The right claimed by the appellants is a matter of fact, to be determined by the evidence showing or tending to show the location of the boundary line between States, and it has been held that where it appears that the plaintiff's rights depend on questions of fact, as to whether the land in suit was within the boundaries of an original grant, it is

a question of fact, and therefore not within the jurisdiction of the Federal courts;

Joy *vs.* St. Louis, 122 Federal, 524.

Affirmed by the Supreme Court in 201 U. S., 332.

To the same effect:

Fihliol *vs.* Tourney, 119 Federal, 974.

Affirmed in 194 U. S., 356.

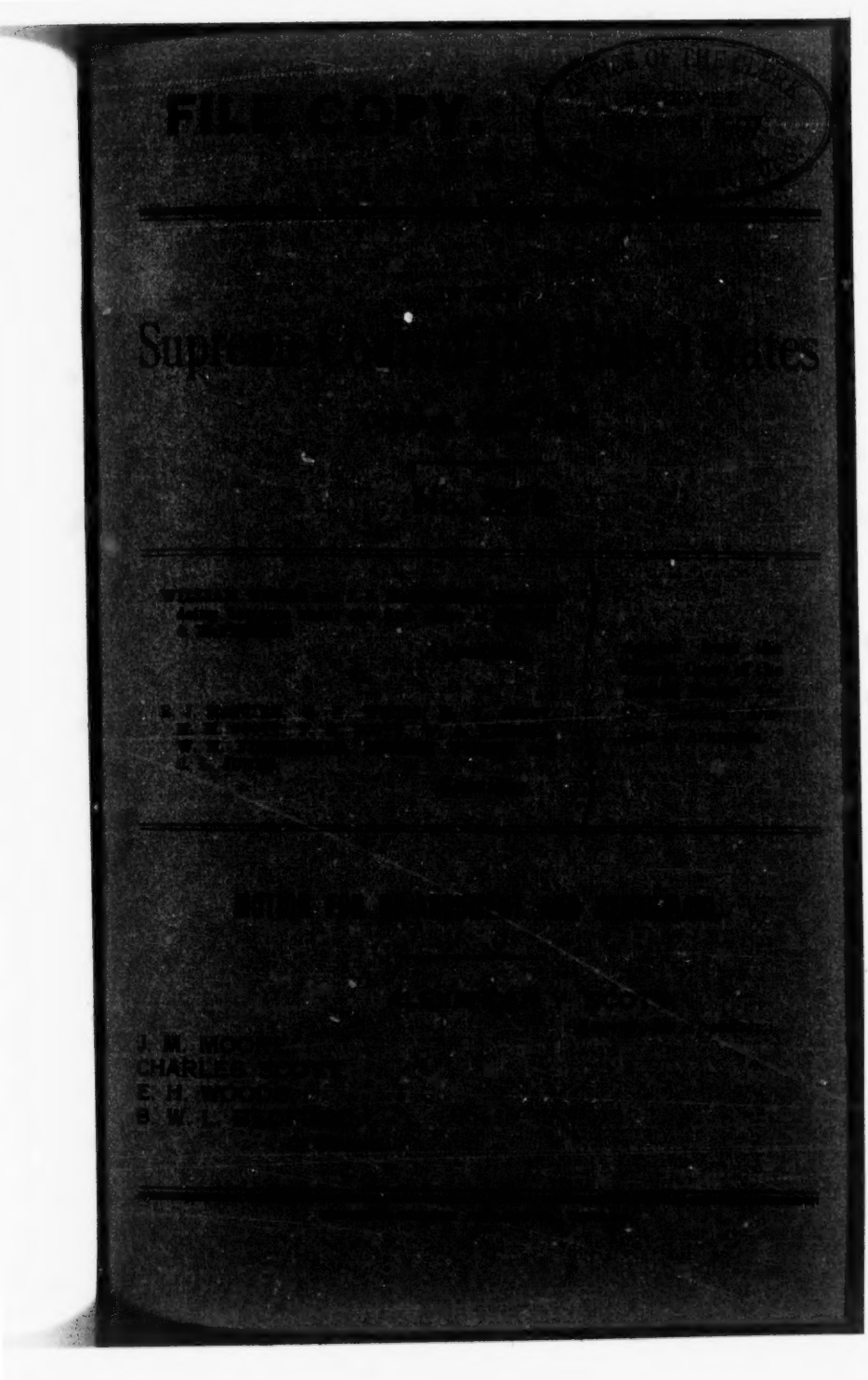
Second. It is also contended that the court has jurisdiction because the parties were claiming grants from different States. In the Supreme Court of the United States, in Stevenson *vs.* Fain, 195 U. S., 165, it was held that the circuit court did not possess original jurisdiction over controversies where citizens of different States claim grants from different States by reason of the subject-matter.

It appears that the parties to these proceedings are citizens of different States, but none are citizens of Arkansas.

Very respectfully submitted,

ALEXANDER Y. SCOTT,
For Appellees.

J. M. MOORE,
CHAS. SCOTT,
E. H. WOODS,
Of Counsel.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 222

WILLIAM MOORE and J. S. McFERREN, Partners doing business under the firm name of MOORE & McFERREN, *Appellants,* *vs.* **R. J. McGUIRE, E. H. WOODS, M. Y. SCOTT, M. M. SCOTT, E. M. SCOTT, W. A. YERGER, W. H. FITZGERALD, HUBERT WILSON and C. L. JONES,** *Appellees.*	Appeal from the Circuit Court of the United States, for the Eastern District of Arkansas.

MOTION FOR RE-ARGUMENT AND CERTIORARI.

Now come the appellees herein by their solicitor, Alexander Y. Scott, and petition the court for a writ of certiorari directed to the Hon. W. R. Field, clerk of the Circuit Court of the United States for the Eastern District of Arkansas in the Western Division thereof, requiring the said W. R. Field to certify to this Honorable Court so much and such parts of the original evidence introduced at the trial of the said cause as follows, to-wit:

1. Entire Exhibit "B" to E. N. Nall's deposition being field note books 8/B and 17/F.

2. Maps of Township 21, Range 8 West, filed as exhibit ..... to E. H. Nall's deposition and Exhibit "C" to Wm. McAndrew's deposition.

And for cause of petition show unto your Honors that the record of said originals does not conform in many particulars to the originals so filed, and that an inspection of the originals so filed is believed to be necessary that justice may be done and a correct and full idea of the exhibits so filed be had by the court.

Appellees file herewith as Exhibit A certified copy of Exhibit 8/B to E. H. Nall's deposition.

Appellees also move the court for a re-hearing of said cause and a re-argument thereof in this Honorable Court.

ALEXANDER Y. SCOTT,
Solicitor for Appellees.

IN SUPPORT OF SAID MOTION APPELLEES FILE THE FOLLOWING SUGGESTION OF ERROR AND ARGUMENT THEREON:

MAY IT PLEASE THE COURT:

The decision of this Honorable Court is so profoundly respected by me that under hardly any circumstances, except those peculiar to this case, would I have the temerity to file a suggestion of error and motion for a re-argument. The case in point, however, presents the exception, because the court has, it is believed, been led into errors of facts by the failure of the record to properly reproduce the Field notes, Exhibit "B" to E. H. Nall's deposition and a clear and patent error of the court and counsel for the appellants, unreplied to by either brief or oral argument of appellees.

The opinion of the court establishes this fact conclusively, and it is because of this alone that I venture to file a suggestion of error and rely with so much confidence upon the court granting a re-argument.

The opinion of the majority of the court, rendered by Mr. Justice Holmes, whose opinions I have learned to regard with peculiar reverence, at page four, sheet opinion, says:

> *"The next map, however, is more definite. It is a map of Township* 21, *Range* 8 *West, Mississippi, said to be projected from the field notes of Benj. Griffin, also produced, made in January and February,* 1830. *Here the island is divided up as a part of the township, although not sectionized under the United States statutes and there are other slight indications that the draftsman regarded the island as belonging to Mississippi. This map is more or less counteracted by another map*

of the same township and signed by Benj. Griffin which does not sectionize the island, and indicates, if it indicates anything about it, that the channel is on the East Side. The field notes in two places speak of 'where the west boundary comes to the river' and they give the width of the east channel at the top as 2,920 feet. The defendants contend that the first mentioned of these maps is the complete work, but that hardly can be said to be proved."

The field notes of Township 21, Range 8, and the map projected therefrom is a most accurate and important piece of evidence and is introduced in the record for the purpose of establishing the fact that *in the year* 1830, *the channel of the Mississippi River was west of Island* 76, *and at that date Benj. Griffin, Deputy Surveyor of the United States Government, and his assistants sectionized and surveyed the island as a part of the State of Mississippi, and left indefaceable evidence of where the channel of the Mississippi ran at that date.*

If, then, the court has misunderstood this official, positive and record evidence, it is not strange that it should have failed to sustain the finding of the learned judge below, who had the advantage of some three days' oral argument upon the original copies of plats and field notes produced before the court below.

I have quoted from the learned opinion in this case only the facts as above, because if I can point out to the court a clear misconception of facts, due to a clear misunderstanding of this survey, I am confident that they will speedily remedy same by affording an opportunity for a full discussion before the court of the

entire record. The cause of the error into which the court seems to have been led, is due, it seems to me, to misunderstanding of counsel for appellants clearly demonstrable from the printed brief they have filed in this case and that portion of the argument in said brief which is to be found on page 43 thereof, aided by the failure of the record to convey to the mind a full understanding of the entire Exhibit B to E. H. Nall's deposition.

The first error of the court that I point to is as follows: The court says: "They (the field notes) give the width of the east channel at the top as 2,920 *feet.*" In appellants' brief at page 43 we find this statement: "that at the head of the east channel (as shown by field notes) it was 2,920 *feet* (page 213)." Emphasis mine.

This is an error the court and probably the counsel fell into because of the numerals 2920 on page 213 of the record about the middle of the page, supposing the numerals 2920 to indicate *feet.* I will discuss the entire field notes fully hereafter but for the present we will consider the language of the record. At page 213 of the record appears the following:

> "*distance X the shoot of Island 76 from the beginning of the last St. N. 40 E. 2920 intersecting the opposite traverse 26 ch. on the 1st St.*"

Both counsel and court assume that the 2920 means *feet.* This is clearly an error. The correct distance is not 2920 feet, but 29.20 chains—29 chains and 20 links.

Without reference to the deposition of Andrews, this is apparent from the *entire field notes as well as from the universal custom of land surveying, for dis-*

tances in surveying are measured not by feet and inches, but by chains and links.

Thus, an examination of the entire field notes forming Exhibit "B" to E. H. Nall's deposition, beginning at page 213 and ending on page 234, will show that no where in the field notes are feet mentioned, *but that every distance is referred to in chains and links.* Not only is this true of the Benj. Griffin survey, but of the field notes of the Pelham survey beginning on page 173. And on every map filed in this cause the distances are given in chains and links. Every survey made by the United States Government is so made, and nowhere do we find a surveyor referring to distance in yards, feet or inches, but always as chains and links. So the map of Benj. Griffin survey (page 234) contains at the head "N. 40 E. 29.00," clear 29.00 chains and meaning the 29.20 chains of the field notes. Andrews says, record page 261:

> "The distance at the head of the island is designated on the map as 29 chains."

Andrews speaks in chains. So Shackelford speaks in chains (see answer to interrogatory 13, page 252). In addition to this the instructions of the government office required the surveyors to express distance in terms of the "four pole chain of 100 links." I find the foregoing at page 203, "Manual of Land Surveying," by F. Hodgman, edition of 1900, and also find at page 193 of the same work the same instructions for the year 1815, which likewise required distances to be given in chains and links. I have not the full instructions before me, but it is perfectly clear the distance here meant is 29.20 chains. I have been unable to procure

a full copy of the land department instructions for original surveys in force in 1830, but from an examination of all original field notes I have seen it is clear all distances were given in chains and links, and unless chains and links are here meant--there is just as much reason to call it *inches* as *feet* or yards as inches. The distance is clearly expressed in terms of land surveyors.

Thus, then, written out in full the above quotation would read:

> "Distance across the shoot of Island 76 from the beginning of the last station North forty degrees East 29.20 chains, intersecting the opposite traverse 26 chains on the first station."

There is quite a difference between 2920 feet and 29.20 chains. The latter distance, that is 29.20 chains, equals 1927.20 feet, which means to say that the shoot is nearly 1,000 feet less in width at the head than the court has been led to believe by appellants' brief and by the error in supposing the numerals 2920 to refer to feet. The error of the court in supposing the distance, in view of the record, to be 2,920 feet is easily understood, but it is more difficult to understand, in view of Mr. Shackelford's and Andrews' depositions and the cross-examination by counsel of Mr. Andrews, how counsel misunderstood the 2920 of the field notes to mean 2,920 feet and the 29.00 entered on the Benj. Griffin map of 1830. opposite page 234, to mean 2,900 feet.

I have thus called the court's attention to this error for I deem it important, and one of the inducing causes of the chief error of the court in regard to the Benj. Griffin survey of 1830 and the map projected from that

survey opposite page 234 of the record, which error is shown in that part of the court's opinion first quoted above, that is to say: *"The map is said to be projected, —etc.—made in January and February,* 1830" and *"The island is divided up as a part of the township, although not sectionized under United States statutes"* and *"The map is more or less counteracted by another map etc."* These errors in the opinion of the court having been induced by the failure of the record to fully represent the field notes.

I shall later take occasion to comment upon the remarkably artificial argument to be found on page 43 of appellants' brief with regard to distances scaled across the shoot of the island on the various maps projected from the various field notes, and introduced into evidence.

If the court will patiently follow me I will, at the risk of tediousness, do that which could be more thoroughly done in oral argument, that is, demonstrate to, I had almost said, a mathematical certainty, I do say to a moral certainty, that the survey of 1830 made in January, February and October by Benj. Griffin is a careful and painstaking survey just as that subsequently made in 1846 by Mr. Pelham is, and is just as reliable and is to be as much depended upon to show the whereabouts of the channel in 1830 as the Pelham survey is to show the whereabouts of the channel in 1846 and *that Benj. Griffin, Deputy Surveyor of the United States, did in* 1830 *sectionize the island under the United States statutes as a part of the State of Mississippi and that in* 1830 *it was impossible that the main channel of the Mississippi River should have run east of Island* 76.

For a complete understanding of this survey of 1830, we must first clearly understand the entire exhibit "B" to E. H. Nall's deposition. This exhibit in the record is shown to begin on page 213 and to extend to page 234. This entire exhibit forms the field notes of Township 21, Range 8 West, State of Mississippi. This exhibit is made up of *two separate field-note books*, that is to say, one of the field-note books and one part of the exhibit, being marked 17/F, begins on page 216 of the record and extends to page 233 of the record. It must be understood that this part of exhibit "B," that is 17/F, constitutes a *separate* and *distinct field-note book*, as is shown by the certified copy of the original introduced into evidence in the court below. At the end of this part of the exhibit on page 233, the following words appear: "*Recorded April 9th*, 1830. *T.* 21 *R.* 8 *W. Choctaw District, Surveyed by Benj. Griffin D. S. in January and February* 1830." On page 234 is the certificate of E. H. Nall, Land Commissioner of the State of Mississippi, stating that he has in his keeping the records of the "Surveyor General's Office" and he certifies that the foregoing is a correct transcript from said records in so far as it is shown in field-note book 17/F of the original survey now on file. This part of exhibit "B" standing alone, would indicate that it was the entire field notes of Township 21, Range 8 West, State of Mississippi, but there is in the land office at Jackson a field note book marked 8/B. This field note book, 8/B, contains the complete field notes of Township 22, Range 8 West, as well as field notes of fractional Township 22, R. 9 W., and Fraction Township 21, R. 10 W., and Fractional Township 21, R. 9 West.

In other words, exhibit 8/B is the original field note book of the original field notes of Township 22, Range 8 West, as well as the last mentioned three fractional townships, and is the original field-note book on file in the land office at Jackson, Miss. (See E. H. Nall's deposition and the cross-examination of D. E. Myers, pages 208 and 209.) That part of said original field-note book copied in the record, gives the survey of Island 76 and begins in the record on page 213 and extends to page 215. (Hereafter herein, I shall refer to the Exhibit 8/B as the field-note book of Township 22, R. 8 West, for the sake of brevity, but it will be remembered that this book contains the original field notes from the original survey of the fractional townships as above stated as well, all being a part of the State of Mississippi and surveyed and sectionized in 1830 and 1831 by Benj. Griffin, Deputy Surveyor.) This field-note book, designated as 8/B, containing the original and official surveys and sectionizing of the several townships above mentioned, which were surveyed and sectionized under the United States statute, and likewise contains the original survey and sectionizing of Island 76 and *is as official for the island as for any other part of the survey.*

The asterisks interspersed through this part of E. H. Nall's Exhibit 8/B indicate that the complete field-note book 8/B has not been copied, but only so much thereof as has reference particularly to Island 76 and its traverse, and connecting it with the main shore of Mississippi. Field-note book 8/B, then is contained in a separate book and constitutes the original field notes of Township 22, Range 8 West, State of Mississippi as surveyed by Benj. Griffin in October, 1830.

Field-note book 8/B, beginning on page 213 of the record, begins thus:

> "Field notes of Township No. 22, in Range 8 West in the Choctaw District of Mississippi, Surv'd by Benj. Griffin, Dep. Surv. 1830 T 22 R 8 W
> Traverse of Island 76 beginning at the Upper end"

Following below and to the left of the page is the traverse of the island with stations, course and distance, and extending from Station one on through, and containing a survey of the entire island, surveying and sectionizing the island as *Sections* 6 *and* 7 *of Township* 22, *Range* 8 *West, State of Mississippi, and dividing Section* 6 *into Lots* 1 *to* 8, *inclusive, and Section* 7 *into Lots* 1 *to* 3, *inclusive.*

At the end of field-note book 8/B the following words are written: "Finis. T. 22 R. 8 W. 1830, October 30." page 215 of the record. Then follows the certificate of E. H. Nall, Land Commissioner, who certifies that he has in his official keeping the records of the "Surveyor General's Office," and that the foregoing pages are true and faithful copy, or transcript of and from the said records in field-note book 8/B of the original surveys now on file and in his keeping as a part of the record of the said land office.

Thus, then, it is found that Island 76 was originally surveyed and sectionized in October 1830, as Sections 6 and 7 of Township 22, Range 8 West, *and was surveyed by Benj. Griffin, Deputy United States Surveyor, being a survey made by him on the ground and contained in the original field-note book of said survey now on file in the proper official department in Jackson, Mississippi.*

The contention of the defendants is that the two field-note books above containing the field notes of the main land of Township 21, R. 8 W., and the field notes of the survey and traverse of Island 76 form the complete set of field notes of Township 21, Range 8 West, and that the complete field notes of Township 21, Range 8 West, contains 37 sections and that the map opposite page 234 is projected from the survey made by Benj. Griffin in January and February, 1830, *and* from the survey made by Benj. Griffin in October, 1830, jointly and not alone from the survey made by Benj. Griffin in January and February, 1830, and that the two surveys thus form the complete field notes of Township 21, Range 8 West, as surveyed and sectionized under the United States statutes by Benj. Griffin, Deputy Surveyor for the State of Mississippi.

For a more complete understanding of what now follows, it is necessary to bear in mind that Township 22, Range 8 West, is directly North of Township 21, Range 8 West, and that they are adjoining townships. Benj. Griffin surveyed and sectionized both Township 21 and 22, Range 8 W., State of Mississippi. In the survey of January and February, 1830, of Township 21, R. 8 W., he surveyed only the *main land as is shown by exhibit* 17/F, beginning on page 216 and ending on page 233 and nowhere in the said survey and exhibit does he make reference to Island 76, but exhibit 17/F sectionized Township 21, Range 8 West, as containing only 35 sections, all of which are on the main land and there is no scale of measurement on the island, nor from the main land to the island. Nowhere within the entire field notes of 17/F is Island 76 mentioned

in any form, shape or manner. Thus a true map projected from the field notes 17/F would not even sketch in Island 76, for no reference is made to the island even in the remotest manner.

We now come to consider exhibit 8/B beginning on page 213. As stated above this is field-note book of Township 22, Range 8 West, and this township lying directly north of Township 21, Range 8 West, was surveyed and sectionized in October 1830, that is, in the Fall of the same year in which Township 21, Range 8 West, was sectionized and both townships were surveyed and sectionized by Benj. Griffin. Upon examining these latter field notes, we find that in October, Benj. Griffin began a survey of Township 22, Range 8 West, in Mississippi, and he began with the "Traverse of Island 76, beginning at the upper end," page 213. From the first station at the upper end of the island, the surveyor runs entirely around the island, as stated above, sectionizing the island as Sections 6 and 7 of Township 22, Range 8 West, Choctaw District of Mississippi and in field-note book 8/B the island stands sectionized *originally* as a part of Mississippi and as a part of Township 22, Range 8 West, all of which is contained in the original survey and field notes of the said township. Not only in this survey are Sections 6 and 7 of Township 22, Range 8 West, carefully divided into lots, but the acreage of each lot is given, course and distance of each lot and the entire acreage of the island, showing a most painstaking and careful survey of the island at that date.

But what now seems to follow in this original note book in the official keeping of the Land Commissioner

at Jackson, and being the original survey of Township 22, Range 8 West?

On the same page and to the right of the letters and figures giving course and distance, the following words are written in *red ink:*

> *"Island 76 is in Township 21, Range 8 West and not in T. 22 R. 8 W. and instead Sections 6 and 7, should be sections 36 and 37 of Township 21 Range 8 West."*

And just below in *black ink:*

> *"This island is properly within Township No. 21 Range 8 West."*

And on a slip of paper pasted in the book the following:

> *"distance X shoot of Island 76 from the beginning of the last St N 40 E 2920 intersecting the opposite traverse 26 ch on the 1st St."*

Here, then we find that Island 76 was surveyed as a part of T. 22 R. 8 W., Mississippi, by Benj. Griffin in October, 1830, and carefully sectionized under the laws of the United States and that the said Benj. Griffin measured the distance from the head of the island "X the shoot of island 76"—not across the river—and found the said shoot to be 29.20 chains. That is, that he surveyed and sectionized the island as a part of the State of Mississippi, found the *"shoot"* and not the channel of the river was between the island and the main shore of Mississippi and that the island was a part of the State of Mississippi.

When the course and distance to the main shore was found, it was found that instead of the island falling properly in and as a part of T. 22, R. 8 W., the head of the island fell just below the north line of T. 21,

R. 8 W., and so the surveyor went carefully over his field notes and where the words "Section 6" appear, the words are written in *red ink* "Should be section 36, T. 21 R. 8," and where "Section 7" appears the words are written in *red ink* "Should be section 37, T. 21 R. 8 W."

Thus is amply shown the fact that Mr. Griffin who made this survey, first sectionized the island as a part of Mississippi and as a part of T. 22, R. 8 W., but subsequently finding that instead of being in T. 22, R. 8 W., in the State of Mississippi, that it was properly in T. 21, R. 8 W., in the State of Mississippi, carefully corrected the error with red ink, so as to call prominent attention to the fact that the island was in T. 21, R. 8 W., and not in T. 22, R. 8 W., as first surveyed.

Understanding, now, the *two* field-note books, being the field notes of T. 21 and T. 22, R. 8 W., Mississippi, we are in position to discuss the maps filed opposite page 176 and page 234. And first the map opposite 176.

This map is projected from *a set* of field notes, that is, the map is correct and reliable only to the extent that it conforms to the field notes from which it is projected. The field notes are the record of the actual survey and form the original data made by the surveyor on the ground, and the field notes and not the map, sectionize the various townships and note the actual condition of the territory, the map being merely a pictorial representation for the eye of the conditions found by the surveyor and placed in enduring form by course and distance in his field-note book.

> "Original surveys are the surveys which are first made for the purpose of locating on the ground the boundaries of tracts of land marking them by

visible objects. This work is called field work. A full description of what is done is kept by the surveyor and is called the field notes. *The field notes furnish the data from which to make a map of the land and calculate the area.*"

A Manual of Land Surveying, by F. Hodgman, page 1.

What then, does the map opposite page 176 represent and from what is it taken? Mr. Andrews in his deposition, page 274, says, referring to this map: "The map conforms to the field notes as shown in exhibit 'B' to Mr. Nall's deposition and marked 17/F. That is the map marked exhibit 'D' to my deposition." Field notes 17/F begin on page 216 of the record and extend to page 233. From the beginning to the end of these field notes, Island 76 is not mentioned. The distance from the mainland to the island is not mentioned and hence, the island must simply have been sketched in without any regard to scale. That is, the map being a correct representation of the field notes, is only drawn to scale as to that part of the map taken from the field notes. To establish this conclusively, Mr. Andrews' deposition is not necessary. It is simply necessary for the court to read the field notes 17/F and it will see there is no distance given across the shoot and the island is in no way connected with the main shore. This being the case, the map stands as a representation of 17/F, which is the main land of Mississippi and is that part of Township 21, Range 8 West, Mississippi, surveyed in January and February, 1830, by Benj. Griffin and containing *thirty-five sections. The plat of this survey being made May* 31, 1830, *several months prior to the survey of Township* 22, *Range* 8 *West, in October,* 1830,

when the distance across the shoot was measured by Mr. Griffin.

As to the Benj. Griffin map opposite page 234. First: In my original brief filed in this case, at page ....., I state that the copy of the map filed in the record is not a full size copy of the actual map filed in the court below, that map being upon a scale of 80 ch. to two inches. The map here is upon a scale greatly reduced in size and is only on the scale of 80 ch. to 1.4 inches, two inches to the mile being the scale of nearly all government maps.

Comparing this map with the map opposite page 176, it will be found that the two maps correspond exactly, except as to the scale upon which they are drawn, *so far as that part of the township lying on the main land is concerned,* excepting alone as to Section 35. The mainland in map opposite page 176 is divided into thirty-five sections and the mainland in the map opposite page 234 is divided into thirty-five sections, and the traverse of the main land bank is identically the same in the two maps, as is the dividing of certain sections into lots, and the traverse of Lake Bolivar. The difference in the two maps consists in the representation of Island 76 and of Section 35. In the map opposite page 176, Island 76 is simply sketched in, without attempting to give its form or shape, and Section 35 is not divided into lots. In the map opposite page 234 Island 76 is carefully platted and is divided into Lots 1 to 8, inclusive, Section 36 and one to three, inclusive, Section 37, T. 21, R. 8 West, and the course and distance and shape of the island are carefully and distinctly and fully platted, and Section 35 is divided into lots.

Now, then, what does this map opposite page 234 represent and from what field notes is it projected?

Mr. Shackelford, in his deposition at page 251, in answer to interrogatory No. 9, says:

> *"I made an independent plat from the notes of the river bank and a traverse of Island 76 from the field notes, not a tracing, and after comparing it with the map itself, found them to agree,"*

and he further says that the map is made from the *whole of exhibit "B" to Mr. Nall's deposition.* Now, then, turning to page 213 of the record, the field notes 8/B, being the field notes of T. 22, R. 8 W., Mississippi, made by Benj. Griffin in October, 1830, and we find a survey of Island 76; that Island 76 was surveyed in October, 1830, and carefully sectionized as a part of Sections 6 and 7, T. 22, R. 8 W., Mississippi, the surveyor running entirely around the island by course and distance and carefully designating the topography of the island. Thus, at the bottom of page 213 the words *"Above high water mark,"* and on page 214 *"This line was open woods with vines and briars, in places above high water mark, overflow from* 1 *to* 4 *feet, soil good."* Further down page 214, *"This line was open Cottonwood swamp. The South and East side of the island is an open Cottonwood swamp—heavy-timbered, subject to overflow from* 1 *to* 4 *feet. Soil generally good. The north and West side is mostly cane, above high water mark, soil very good,"* and on page 215, *"The traverse around the S. is mostly open woods, some cane, subject to overflow in many places, Stiff, rich soil."*

Now, all of this is not taken from the draftsman who made this map, but is taken from the field notes

of Benj. Griffin, Deputy Surveyor, who in October, 1830, *surveyed Island 76 as a part of the State of Mississippi.* These field notes form a record of what Benj. Griffin, in October, 1830, saw, on the ground, and what he did on the ground. And if one map was destroyed, any competent draftsman could reproduce from these field notes another map giving exactly the same conditions and pictorially representing to the eye what Benj. Griffin saw and did in October, 1830, on T. 21 and T. 22, R. 8 W., Mississippi, just as only a few years ago, Mr. Shackelford, at the time of the taking of his deposition, reproduced independently and without tracing, a map similar in every respect to that opposite page 234 from the entire field notes filed as exhibit "B" to Mr. Nall's deposition. *It is not then a question of maps, but of surveys and of field notes of original surveys.*

But what else did Benj. Griffin, Deputy United States Surveyor, do in 1830?

He not only surveyed Island 76 as a part of the State of Mississippi and sectionized it as such, but he connected the island by course and distance with the main shore, fixing the position of the island as it then was for all time and giving its exact relation to the Mississippi shore. Thus, page 213, the field notes say:

> "*distance X the shoot of Island 76 from the beginning of the last St. N. 40 E 2920 intersecting the opposite traverse 26 ch. on the 1st St.*"

Written out thus:

> "*Distance across the Shoot of Island 76 from the beginning of the last Station North 40 degrees East 29.20 Chains, intersecting the opposite traverse 26 Chains on the First Station.*"

Mr. Griffin, who surveyed the river bank, has said that the body of water between Island 76 and the Mississippi shore, was the "shoot of Island 76," and further, the *original field notes contain this distinct statement:*

> *"Island 76 is in Township 21, Range 8 West, and not in Township 22, Range 8 West, and that instead of sections 6 and 7, should be sections 36 and 37 Township 21, Range 8 West. This island is properly within Township 21, Range 8 West."*

THAT IS TO SAY, THAT MR. GRIFFIN DISTINCTLY STATES THAT ISLAND 76 IS WITHIN THE STATE OF MISSISSIPPI, AS SECTIONIZED AND SURVEYED BY HIM IN OCTOBER, 1830.

Further as to the Benj. Griffin map opposite page 234. The attention of the court has been called to the fact that this map in the record is a reduced copy. The map actually filed consists of a pen and ink tracing from the original map on file in the original map book of the Surveyor General in Jackson, Mississippi, and a *certiorari* has been prayed that the said map may be sent up to this court. That this is correct see the certificate of E. H. Nall, Land Commissioner, page 235 of record. This map is signed by Joe Dunbar, Surveyor South of Tennessee, and contains this note: "Note—T. 22 R. 8 W. is recorded in book containing maps of Choctaw Cession 1830," and this same original map contains Section 35 S. Choctaw Boundary divided into Lots one to nine, inclusive. Why this "Note —T. 22 R. 8 W. is recorded in book containing maps Choctaw Session 1830"? Clearly because Island 76, the field notes of which is in the survey of Section 22, R. 8 W., has been platted in the *original map* in

the Surveyor General's office as properly a part of T. 21, R. 8 W., to which it of right belongs.

But how about Section 35 of T. 21, R. 8 W., and the difference between that in the map opposite page 234 and in the map opposite page 176? The court has gone out of the record for historial data, and properly so. It will do so in this instance. Upon application at the land office in Washington, the court will find a supplemental plat of Section 35, dividing this section as it is shown in the map opposite page 234 into Lots 1 to 9, inclusive, South Choctaw Boundary and containing the following certificate:

"Surveyor's Office,
JACKSON, Mi: June 2, 1847.

I certify that the above diagram is correctly copied from the approved recorded plat of T. 21 R. 8 W. on file in this office.

C. A. BRADFORD,
Surveyor South of Tennessee."

and this map, or plat of Section 35 will be found to show the markings of red and black ink in said section as it appears in the map filed in this suit, a copy of which purports to be in the record opposite page 234, and which map is the orignal map in the original plat book in the Surveyor's office then in Washington, Mississippi.

It is not necessary to call the attention of the court to the fact that all the original field notes, maps, etc., of the surveys were retained in the Surveyor's offices in the various states and that copies were sent to Washington, D. C., and that these original field notes and plats so far as the states are concerned are now in the custody of the various states in the proper department, and that the plat and field notes introduced

by Mr. Nall are from the originals made by the surveyor at the time.

One other suggestion—showing that the error in the plat opposite *176* was discovered about 1832. We find the notation on that plat as follows:

> "Surveying the boundary lines, all sectional lines, connections to the front sections, Traverse of both sides Bolivar Lake & Traverse Miss. charged by B. Griffin, No 3 1832. Also traverse & retraverse of Island 76 (followed by word or words I cannot decipher)".

Thus showing that Benj. Griffin had charged his survey of Island 76 and being noted on the partial map of T. 21, R. 8 W., first sent in to Washington, D. C., and that at that early date they had the information conclusively establishing beyond the shadow of a doubt that the Official Surveyor of the United States sectionized and platted Island 76 as a part of Mississippi under the United States statutes in October, 1830.

Now, then, to return to that part of the opinion of the court first quoted above. It is quite apparent that the court was misled by supposing the 2920 in the record to refer to feet and by the confused way in which the field notes are printed. We, therefore, find the facts to be:

The Benj. Griffin map opposite 234 was projected from the *original field notes of the T.* 21 *R.* 8 *West,* as surveyed and sectionized by Benj. Griffin in January and February, 1830, *and in October,* 1830. This is proved by the fact that Mr. Shackelford, taking the field notes filed as exhibit "B" to Mr. E. H. Nall's deposition, reproduced from them an original map corresponding with the map herein filed. (See Mr. Shackelford's deposition, ..., page .....)

Second: The island was sectionized under the United States statutes by Benj. Griffin, deputy United States surveyor, in the field notes filed as Exhibit "B" to Mr. Nall's deposition, first as Sections 6 and 7 of Township 22, Range 8 West and then changed to Sections 36 and 37 of Township 21, Range 8 West, State of Mississippi and the island was considered by Benj. Griffin as a part of the State of Mississippi. *This fact is clearly and positively established by the original field notes of the surveys made by Benj. Griffin and filed herein as 8/B of Exhibit "B" to Mr. E. H. Nall's deposition.*

Third: The Benj. Griffin map at page 234 is not counteracted by the map opposite 176, but it is clearly shown by the field notes that Benj. Griffin, who made both surveys thought the island first a part of T. 22, R. 8 W. instead of T. 21, R. 8 W. and surveyed it as a part of T. 22, R. 8 W.

Fourth: The distance across the east channel at the top *is not* 2,920 *feet*, but the distance across the shoot *is* 29.20 *chains*, or 1927.20 feet.

Fifth: We believe that with the correction as above shown it is clearly demonstrated that the Benj. Griffin map opposite page 234 is a complete map projected from the entire field notes of T. 21, R. 8, W. Boliver County, State of Mississippi.

But, may it please the court, whether the island was sectionized as a part of *T.* 21, *R.* 8 *W.* or as a part of *T.* 22, *R.* 8 *W.*, the fact stands out boldly and prominently, and without contradiction in any form, shape or manner in the record, that Benj. Griffin, deputy surveyor of the United States, in October, 1830, on

the ground and at the place, surveyed and sectionized Island 76 as a part of the State of Mississippi, declaring the island to be within the said state, and designating the "east channel" as the "shoot of Island 76" and not designating said channel as the Mississippi River.

Besides the distinct statement of Mr. Griffin that the island was a part of Mississippi and his giving the distance across the shoot, the physical facts entered in the original field notes with regard to the formation of the island shows conclusively that the channel was west of island 76 and had been west of the said island for a long time prior to that date, for it is noted that the high land is at the north and west of the island and the low land to the south and east. It is a well known and universal natural fact that on all alluvial streams, the highland immediately adjoins the channel of the stream and the drainage is away from the channel. This is necessarily so, because when the water charged with sediment overflows the channel the current stacking it deposits the sediment nearest the channel and becomes less full of sediment and the further it goes from the channel it deposits less and less, thus making the drainage away from the channel. (See depositions of Mr. Shackelford and Mr. Andrews, and any work on alluvial streams.)

As Mr. Griffin states, the channel of the river was west of Island 76 in 1830, the topographical conditions show that it must have been west of the island for a long number of years prior thereto in order that the deposits from the river should have made the western bank higher than the eastern bank.

Now, then, may it please the court, counsel in their brief constantly refer to the Pelham survey as the "Government Survey" and the Benj. Griffin survey as shown opposite page 234 as the "map opposite page 234."

Certainly the Pelham survey was a government survey, made by Mr. Pelham, surveyor of lands for Arkansas, but the map opposite page 234 is projected from the field notes of a survey made by Benj. Griffin, deputy surveyor of the United States for Mississippi, and if Mr. Pelham's survey is a government survey, which it is, certainly Mr. Griffin's survey is a government survey. In fact, it is from these surveys and these field notes that T. 21, R. 8 W., and T. 22, R. 8 W., and the other townships mentioned above of Mississippi are sectionized and this survey is clearly a government survey of Mississippi made in 1830 and the original field notes of this survey are as binding and as authentic as the field notes of the Pelham survey, or any other. I refer again to the certificate of Mr. Nall, certifying that he has in his keeping the records of the "Surveyor General's Office," and that the field notes attached as Exhibit "B" to his deposition are copies from the *original field note books* in his keeping and possession.

There seems to be in the mind of the court, the idea that because the original field notes of the survey of the mainland of T. 21, R. 8 did not sectionize the island, that at that time Mr. Griffin must have considered the island not as a part of the State of Mississippi. It is suggested among other things as the reason why Mr. Griffin did not survey this island as a part of Missis-

sippi at the time he surveyed T. 21, R. 8, that the survey was made in January and February and it is a well known fact that almost universally the river is very high and often out of its banks at that time of the year and rarely or never is it at a medium or low stage of water. It may be then that Mr. Griffin did not survey the island in January and February because of the stage of the water which would have prevented him from surveying any portion of the island except alone the highest part. On the other hand, it may be also, that the island extending north and thinking that it extended into T. 22, he intended to sectionize the entire island as a part of T. 22, but whatever the reasons were, it is perfectly apparent *that in October* 1830, following the survey of T. 21, R. 8, in January and February, at what is universally a low stage of the water on the river, Mr. Griffin then considered the island as a part of the State of Mississippi, not as a part of Township 21, R. 8 W., but as a part of Township 22, R. 8 W., because he *first sectionized the island as Sections* 6 *and* 7 of T. 22, R. 8 W. Thus it would seem that he thought the island originally not a part of T. 21, but of T. 22 and that it was only after the survey had been completed and the island joined to the main shore by course and distance, that he discovered that the island should have been sectionized within Township 21, Range 8, West, and this being the case, it would seem that the reasons why he did not sectionize the island originally as a part of T. 21 are not necessary to be suggested as he himself furnishes the reason by first sectionizing the island as a part of T. 22, R. 8 W., conclusively showing that he originally thought it a part of T. 22 and not a part of T. 21. The map opposite

page 176 was made May 31, 1830, and from the 17/F exhibit to Mr. Nall's deposition and prior to the survey of October, 1830, and sent on to Washington, D. C., at that time. The law requiring two maps to be made one to be sent to Washington and the other kept in surveyor's office. In October, 1830, the island being surveyed as a part of T. 22, the first map projected from the field notes 17/F had been completed, and hence, could not contain any reference whatever to the survey of Island 76. Subsequently when the island was surveyed as a part of T. 22 and found not to be in T. 22, the changes in the field notes were made and the plat opposite page 234 was projected from the entire field notes, *i. e.,* the island was platted in the original map on file in Jackson, and is now filed and has been on file, in the records of the Surveyor General's Office in Jackson, Miss., so far as is known from the earliest date.

But whether a plat had ever been made from the field notes so entered, the fact remains that the field notes furnish the survey and sectionizing and that the island was surveyed and sectionized in 1830 *in October as a part of Mississippi.*

We come now to discuss the ingenious argument of counsel upon the scaling of the various maps, which argument is to be found on page 43 of their brief.

The argument shows errors of distance quite difficult to understand in one who has familiarized himself with the original testimony as introduced into the court below and also shows such delightful innocency with re-

gard to surveying and platting, that it is unusually interesting. Counsel says:

> "Upon the Choctaw map of 1830, facing page 176, it is shown by scale, as follows:
>
> 1. That at the head of the East channel (as shown by field notes) 2,920 feet. (p. 213.)
>
> 2. That at the narrowest point measured, it was 1,320 feet.
>
> 3. That at the foot of the island it measured 1,650 feet."

First: A. The distance 2,920 referred to at page 213, as shown, refers to 29.20 chains and is not 2,920 feet. B. The distance whatever it is, has no application to the map opposite page 176, but has reference to the map opposite page 234, the map opposite page 176 being projected from the field notes Exhibit 17/F, beginning at page 216 and was completed before the survey notes beginning at page 213 was ever begun (see above), and therefore the distance stated in the field notes 8/B, at page 213, was unknown to Mr. Benj. Griffin at that time, and was unknown to the draftsman who projected the map from the field notes and hence, when counsel says "At the head of the east channel it was (as shown by field notes) 2,920 feet," his statement is shown by the record to be clearly a misconception of facts, so far as the application to this particular map is concerned. So the field notes from which this map was projected, that is 17/F, did not give the distance across the shoot at any point and there is no attempt to draw the island in as a part of the map. The form and shape of the island, nor the island shore line are nowhere attempted to be given and the island is not referred to, nor connected in any way by these field notes, or this map, by course and

distance, or otherwise, with the main shore; hence the scale placed upon the map attempting to give the distance from the mainland across the shoot to the island, is of no value whatever, and is of no more value than *the scale placed on the east bank of the island to get the width of the island across to the west bank* and is of no more value than the scale placed upon *the west bank of the island to get the width across to the east bank of Arkansas,* the draftsman who sketched the island in, showing remarkable impartiality between the width of the shoot, the width of the island and the width of the Mississippi River on the west.

The shape of the island as actually surveyed in October, 1830, appears in field notes 8/B beginning at page 213 and the width across the "shoot" is there shown.

The scale applied to the map opposite page 176 is absolutely correct within the limits of platting, when applied to that part of the map projected from the field notes 17/F. That is to say, the distance across sections 26 and 27, or the distance from section 33 to the east bank of Lake Bolivar or to any other point on the mainland, can be obtained accurately, but only is it accurate when applied to that part of the map actually projected from the field notes. To demonstrate the absurdity of attempting to place the scale on this part of the map, it is only necessary, first, to attempt to scale the distance from the head of the island to the Arkansas shore and we find that it would be 10 chains, or 660 feet, when we know that the distance from that point across to the Arkansas shore, as triangulated by McRae and as shown by Pelham, is some five or six times this distance, for we know that the channel on

the west side is very broad. It would be demonstrated equally as forcibly by scaling the distance across the island from east to west or the distance across the island from north to south. Thus, then, whether or not the distance scales at the narrowest point of this map 1,320 feet, or at the foot 1,650 feet, is totally immaterial for it has no bearing whatever on the case, and there is no attempt on the part of the surveyor, or the party who platted this map to plat this part of it to a scale. Thus, then, it would seem that the argument as to this map is a kind of cuttle-fish performance—a muddying of the waters, first, by a distinct misconception as to the distance across "the shoot" and second, by attempted measurements at two points between the mainland and the island.

See Mr. Andrews' deposition, page 274, interrogatories 1 to 5 inclusive, and see field notes 17/F page 216, *et seq.*

Counsel continues:

> "By McRae's map of 1829, facing page 70: 1. At the head of the island 1,320 feet. 2. In the middle of the island 1,280 feet. 3. At the lower end, 1,650 feet."

First: With regard to this map, the distances being taken by triangulation from points on Arkansas shore to points on the Mississippi shore and the island, the following distances can be obtained. That is to say, from a point at the head of the island to a point N. on the main shore of Mississippi, from a point at the extreme foot of the island to a point nearly directly south on the main shore of Mississippi. That is, these distances can be obtained provided the map is drawn to the proper scale and the scaling properly done the

distance can be obtained accurately within the limits of triangulation and plating for such long distances.

The map itself states that it is 40 chains to the inch, or 80 chains to 2 inches. (I refer now to the map actually in the record opposite page 170.) This, however, is an error for the map is not drawn to the scale of 40 chains to the inch, or 80 chains to two inches but is drawn to a scale of 80 chains to 1.6 inches and this the court can prove for itself by placing the scale on the map. That is the distance across section 33 in every direction is 80 chains, it being a square section one mile in width and that distance measures 1.6 inches. The same is true of Section 32, of Section 29 and of all other sections and parts of sections platted on the map and this is absolute proof of the scale upon which the map is drawn.

If we then take the scale of 1.6 inches to 80 chains, we have the distance across from the head of the island to the point N. on the main shore of Mississippi to be 25 chains, or 1,650 feet. If we place the scale in the same way on the point at the foot of the island to the point named on the main shore, the distance is 30 chains or 1,980 feet. On the other hand, if we take the map to be drawn on the scale of two inches to the mile, the distance at the head and foot of the island would be as given by counsel. The chiefly erroneous part of counsel's argument being the attempt to scale the distance from the middle of the island to the main shore of Mississippi and designating it as 1,280 feet. It is perfectly plain without reiterating the argument made with reference to the former map, that there is no attempt to draw to a scale the points in question. The

surveyor was on the main shore of Arkansas and he in no place attempted to triangulate from the west bank of the island to the east bank of the island for the purpose of getting the distance across the island from east to west, nor did he triangulate from any point on the east shore of the island to the main shore of Mississippi. The line of the east bank of the island simply being drawn, and the main shore line of Mississippi simply being drawn in the form of a curve without any regard to scaling or distance whatsoever, and so far as the surveyor on the Arkansas shore was concerned, the island might have attached at that point to the Mississippi shore, or it might have been several miles away.

The important part of this scaling so far as this map is concerned will be touched upon in a subsequent part of my argument; for the present I am pointing out the ingeniousness of counsel's scaling feats.

To continue with counsel's brief:

"By the map facing p. 234:
1. At the head of the island, 2,900 feet.
2. At the narrowest point 530 feet.
3. At the lower end, 990 feet."

First as to No. 1: An examination of the map itself shows at the head of the island the following figures in the shoot: "N. 40° E. 29.00." Counsel have inadvertently taken this 29.00 to mean 2,900 feet. Just how this error is made by counsel it is difficult to understand and especially in view of Mr. Andrews' deposition on page 261 where it is carefully and precisely pointed out that this 29.00 means 29 chains. Counsel might as well say that the other letters and figures

beginning at the north line of T. 21, R. 8, on this same map, means 26 feet or 26 inches or 26 yards or 26 miles. There is no more reason to say the 29.00 means 2,900 feet than to say it means 2,900 inches. It is clear the surveyor is measuring as a surveyor and means chains. The letters and figures are: "N. 51° W. 26" and clearly means north 51 degrees, west 26 chains. Thus we are brought back to the field notes on page 213, and quote: "N. 40°, E. 2920, intersecting the opposite traverse 26 ch. on the first Station." The 29 chains of the map is evidently intended for the 29.20 chains in the field notes.

Second: "Narrowest point, 530 feet." Mr. Shackelford scales this distance 8 chains or 528 feet; Mr. Levasseur, as 530 feet. And this scaling, if the court please, was not done on a reduced map, such as that filed in the record, but upon the map originally introduced in evidence and was on the scale of 80 chains to two inches. This map furnishes the only map in the entire record where the distance across the shoot from the east bank of the island to the main shore of Mississippi can be scaled accurately within the limits of surveying and platting at any point on the east bank of the island to the main shore of Mississippi, or to any point within the township on the main shore of Mississippi, and hence the distance of 8 chains or 528 feet, is accurate within the limits of surveying and platting. If the plat projected from the field notes is a correct plat, then the distance is obtained almost as accurately as if measurement was made directly from point to point. The shape of the island is obtained by course and distance and the island is joined to the mainland by course and distance and the bank of the

shoot on the mainland is obtained by course and distance. Thus, then the island bank, being carefully platted and the west bank of the main shore of Mississippi being carefully platted and the two joined together by and according to the field notes and by course and distance and drawn to scale, the scale gives the distance between any point on the main shore and any point on the island shore as positively as it gives the distance to any point in any of the sections on the mainland, or any point on any section line from one section to the other. Thus, then, by actual measurement the distance across the head of the shoot in 1830 is 29.20 chains or 1,927.20 feet. The distance across the narrowest point in 1830 was 8 chains or 528 feet. (See Mr. Andrew's and Mr. Shackelford's depositions.) The distance across the lower end by scaling upon the large map introduced into evidence, I make the distance directly across the channel at the foot of the island about 18 chains, or 1,188 feet. On the map here introduced into evidence I make the distance directly across the channel at the foot of the island 17.50 chains or 1,131 feet, and I can only account for the counsel's error in scaling by his failure to understand the scale upon which the map introduced in evidence is drawn. Or it may be that we have not taken the same point exactly. The small difference is immaterial. I wish to note here that the distances just given are not from the same points as shown in the McRae map but are from points directly across the channel from the east bank of the island. Thus, then, it may be said of this map that it is the only map in the record upon which the scale can be accurately placed for the distance across

the shoot to the Mississippi shore, and to any point within the township.

But it would be ridiculous and absurd to attempt to scale from this map the distance from any point on the island across the Mississippi River to the Arkansas shore, the distance across the Mississippi River to Arkansas not being drawn to scale, and the line drawn there, being merely sketched in to show that there is a shore line at some indefinite point to the west of the river west of Island 76.

In this connection, it may be well to call the court's attention to the directions of the surveyor general for the government of original surveys. The order here quoted is taken from the rules promulgated in 1894, I believe, and is taken from page 224 Hodgmans' Manual of Land Surveying (*supra*). It is believed that the same rule prevailed in the early days, although I cannot verify it here. The land office can quickly furnish the fact.

> "Meanderings * * * 2. Navigable rivers as well, etc. * * * the right angle width of which is three chains and upward will be meandered on both banks at the *ordinary mean highwater mark*, etc. * * * and, 4. Meander lines will not be established at the segregating line between dry and swamp or overflow land, but at the *ordinary highwater mark* of the actual margin of the rivers or lakes on which such swamp or overflow lands border."
>
> Hodgman Manual, page 225.

So the lines given by the field notes and map indicate the ordinary highwater shore line and disregards any sandbars that may extend out towards the shore as are shown to be in existence at the head of the island, from maps hereafter mentioned.

To continue with counsel's brief:

"The government survey of 1846 (meaning the Pelham survey) facing page 172 shows the following:

1. At the head of the island, 2,960 feet.
2. At the middle of the island, 2,112 feet.
3. At the lower end of the island, 2,970 feet."

The same remarks applicable to the map opposite page 176 apply here. It is simply beyond understanding that counsel so misunderstand surveying and platting as to attempt to place the scale upon the map to obtain the distance between the island bank and the Mississippi shore in this case. It is equally as absurd as to attempt to place the scale on the Benj. Griffin map of 1830 to find the distance from the west shore of the island to the main shore of Arkansas. Now, on this Pelham map being the map opposite page 172, counsel can scale accurately any distance from any one point on the island to any other point on the island, or from any point on the island to any point on the mainland of Arkansas, for the simple reason that the island is here surveyed by course and distance and is connected with the main shore of Arkansas in the same way, it being surveyed in 1846 by this surveyor for Arkansas in exactly the same manner that it had been surveyed in 1830 by Benj. Griffin, deputy United States surveyor for Mississippi. In 1846, Mr. Pelham found the channel east of Island 76 and supposed it to be part of the State of Arkansas. In 1830, Mr. Benj. Griffin found the channel to be west of Island 76 and knew it to be a part of the State of Mississippi, and sectionized and platted it accordingly. Thus, then, we find that counsel's argument with regard to scaling plats in which he attempts to muddy the waters, is simply an argument

unfounded on any facts in the record. When fully understood, the fact boldly stands out that the only map upon which accurate distances by measurement and scale can be obtained from all points on the island to all points on the main shore of Mississippi, *is the Benj. Griffin map and survey of* 1830 and the only map upon which all distances can be obtained from *all points on the island to all points on the main shore of Arkansas, is the Pelham map of* 1846. The McRae map of 1827 giving three points on the island where distances can be obtained to points on the Arkansas shore and three points on the island where the distance can be obtained to two points on the Mississippi shore. But the map opposite page 176, being a map projected from the field notes 17/F, there is no point on the island the distance from which can be obtained by scaling to any point on the main shore, nor from any point on the island itself to any other point on the island.

To return to the Benj. Griffin survey of January and February and October, 1830, we have the following facts clearly proved:

First: That Benj. Griffin, deputy surveyor of the United States surveyed Island 76 carefully as a part of the State of Mississippi and has left record and official evidence that he, in October, 1830, considered Island 76 as a part of the State of Mississippi.

Second: He gives the distance across the "shoot of Island 76," thus clearly stating that the body of water, between the island and the shore of Mississippi is not the channel of the Mississippi River.

Third: He positively states in so many words in

the field notes that Island 76 is a part of T. 21, R. 8, Mississippi.

Fourth: The topography of the island as shown by the field notes, establish that the higher portion of the island is to the north and west and the lower parts to the south and east, demonstrate that the channel was not only west of Island 76 at that time, but had been west of Island 76 for a long time prior thereto.

Fifth: The distance across the shoot is so narrow that the main body of water of the Mississippi River could not have passed east of the island. This distance scales at 528 to 530 feet, but allowing for any reasonable error in platting, and an error could hardly exceed, one way or the other, more than 100 or 200 feet, and in order to make the channel wide enough for the main channel of the river to pass east of the island, there would have to be an error of something like 700 feet, even, supposing that the river would have run at this point within the narrowest channel known, and an error of a great many more feet, if the average width of the channel is considered. (See C. H. West's deposition.)

If there was any error in the platting, Mr. Shackelford, who made a new map from the field notes, did not discover it, nor did counsel have anyone to plat the field notes and thus to show the error. The field notes were before him, and LeVasseur or any other competent surveyor, could have determined whether or not the map opposite page 234 was a correct projection from the field notes in question.

Having thus shown the court the error into which it was inadvertently led with regard to the survey and

map of 1830, I deem it proper to refer to other evidence introduced by the defendants and appellees in this case, substantiating through the years prior to 1830 the positive and record proof of Benj. Griffin and his survey, that the channel was west of Island 76 in 1830 and for a long series of years prior thereto. But before doing this, I understand that it is admitted that the question to be determined, is

> *"where was the middle of the main channel of the Mississippi River in* 1817, *the date Mississippi was admitted to the Union?"*

That this is the question for determination, we understand, is admitted by counsel and by the court in the opinion rendered in this case and we shall address ourselves to that fact, deeming it established that the Griffin survey has established the channel west of Island 76 in 1830. Unless there is some proof adduced in the record that the channel changed between 1830 and 1817 and was east of the island in 1817, it must be presumed, without any further evidence that it was west of the island in 1817, but the record is full of evidence that the channel remained west of the island for a long time prior to 1830.

Beginning this discussion with the earliest evidence before us and which is taken by me from the opinion of the court in this case, we find that in 1806, Cramer's Navigator says that the channel is good on both sides. In 1808 and 1811, it is said that the left side, that is the east side, is the best in low water. We have nothing after that date until 1814, when Cramer's Navigator for the year 1814, being the same work, states that the best channel is on the right side at all stages. The same work reasserts this in 1817 and 1818. Thus, then, we

have the fact that Cramer's Navigator, which was used by pilots for purposes of commerce, states in the very year that Mississippi was admitted into the Union that the west channel was not only the broadest, but the deepest and best to use in all stages of the water, and hence, was the channel of commerce and the one through which the greatest body of water ran. The court says that "in view of this statement for the very year in which Mississippi was admitted into the Union, it is impossible not to hesitate." Indeed, we believe had the court not misunderstood the field notes of the Benj. Griffin survey, that it would not have hesitated, but would have held promptly and positively that this confirmatory evidence of the Benj. Griffin survey conclusively established the channel west of Island 76 in 1817. But, may it please the court, the years 1814, 1817 and 1818 are not the only years in which we have evidence confirming the channel west of the island, and in following the evidence year by year, we have in 1822, Samuel Cummings' Western Navigator, stating that the channel is on the Arkansas side. Where was the channel in 1821? Captain Young, Captain Poussin, and Lieutenant Tuttle confirm Samual Cummings and say it was west of Island 76 in 1821, and they further say that it was west of the island in the lowest stage of water in common years.

> "The soundings on the bars were made during the months of October and November and it is believed that they are accurate for the lowest stage of water in common years."

This is taken from the Reconnoissance Map opposite page 288.

This map made on a small scale may not be accurate

for exact distances, but it is more than a coincidence that Captain Young, Captain Poussin and Lieutenant Tuttle confirm Samuel Cummings and both confirm Zadoc Cramer. But apart from this, this reconnoissance map is deserving of consideration in connection with the maps and surveys that follow, because of the physical facts shown by the reconnoissance map which bespeak the whereabouts of the channel as strongly or more strongly, than the line in the map designating the channel does itself. First, then, we find that these army officers went entirely around this island. They noted the dry sand bars, the line of shallow water to the east of the island and the sand bar to the east. Thus showing that they went entirely around the island. They noted the general shape of the island, it being concave on its western bank and no sand bar on the western bank, showing that there was no shoaling at that point. They noted the dry sandbar extending above the water out towards the Mississippi shore. This bar jutting out into the river towards the Mississippi shore indicates that the main body of water must have passed west of Island 76. These physical facts speak as strong as words and cannot be gainsaid. We thus, then, have confirming the official proof of the Benj. Griffin survey up to this time: Cramer, stating that the channel was west of Island 76 in 1814, 1817 and 1818; we have the testimony of Captain Young, Captain Poussin and Lieutenant Tuttle positively confirming that the channel, as they saw it when they examined the island, was west of Island 76 in 1821. We have the statement of Samuel Cummings that the channel was west of Island 76 in 1822. Thus, then, extending over a period of eight years, including the very year that Mississippi

was admitted into the Union, we have the positive statement of United States engineers and of navigators that the channel was west of Island 76.

There has been considerable attempt on the part of counsel to throw doubt upon this reconnoissance map. We presume that this map was prepared for the purpose of finding the best channel of the Mississippi for gunboats in time of war, and the statement of these gentlemen is certainly entitled to consideration. They could not take such soundings of the river as the Mississippi River Commission does to-day, but it is likewise evident that they made a very careful examination of the river at his point, at all events, and probably the entire distance, and it is hardly probable that they would have made an error in regard to the channel of the river, but if so, it would seem almost incredible that they and Samuel Cummings and Zadoc Cramer should all make identically the same error with regard to this channel, and it must be borne in mind that the evidence here adduced is the only evidence with regard to the channel of a contemporary character.

But we next come to the map of 1827, being the McRae map, and opposite page 170. Of this map the court says: "This map cannot be said to help either side except by speculation of an uncertain sort." We incline to believe that the court is correct in this statement, except that this map furnishes negative evidence that Mr. McRae, the surveyor who surveyed this island, did not consider it in 1827 as a part of the State of Arkansas and that he considered the channel of the Mississippi to run between the State of Arkansas and Island 76. There is strong evidence of this from the

triangulations made across from Arkansas shore to the Mississippi shore and to the Island shore. Thus showing that Mr. McRae was attempting to get the width of the channel at these points.

This map assists us in one other thing. It confirms in part the correctness of Captain Poussin's and Captain Young's reconnoissance map of 1821, in that it partially gives us the shape of the western bank of the island. That is to say, that three points on the western bank of the island are fixed by triangulations and from the points so obtained the draftsman jotted down the shape of the island as it appeared to him. While this line is not attempted to be fixed with any degree of accuracy, it would appear that Mr. McRae considered the western bank of the island to have somewhat the same shape at that date that it presented to Captain Poussin, Captain Young and Lieutenant Tuttle in 1821.

That some small changes took place between 1827 and 1830 in the island is shown from the fact that the distance across from the head of the island to the main shore is not quite the same in 1830 as in 1827, though this distance is quite near, considering the long distance triangulated across the entire river and conforms fairly well with the actual measurements made in 1830 by Benj. Grifin. Thus, the proper scale gives the distance across from the head of the island to a point N. on the main shore of Mississippi at about 25 chains and at the two points at the foot of the island at about 30 chains. On the Benj. Griffin survey, the distance at the head of the island is 29 chains, and from the foot, scaling from a point just at the foot of the island and in

identically the same direction as on the McRae map, is 26 chains. Thus, it would seem that there is not a great deal of difference in the distances between points at the time that McRae made his survey and when Griffin made his survey. The difference is about four chains, or 264 feet, and is probably due to the fact that the McRae triangulations were made at such long distance, and it may be that the measurement in 1830 was not made from the same points on the shore as those designated by McRae in his map of 1827.

There is one other reason why this map furnishes only negative evidence of the whereabouts of the channel and that is because the survey was made by Mr. McRae in February, 1827, and in February it is usual that our river is high, and for that reason it would be hard to determine where the real channel of the river was. The chief evidence of this map, therefore, is of a negative nature.

After 1830, we have the statement of Cummings, Western Pilot for 1833, and we read:

> "Channel either side. The right is nearest and the left probably deepest."

Thus, it would seem that the Western Pilot was in doubt as to whether the right channel was deepest or not. The words are: "Probably rather deepest," indicating that there was probably very little difference in the depth of the two channels at that date, and we know that if that was the case, *the great body of water would have passed down the west side of the island, because that was much the larger channel.*

The next reference to Island 76 is in 1835 from Captain Downing, who states that he was in Township 21

in that year and he found that the bank had not fallen in a great deal, showing that while he was there, and just prior thereto, there had been some caving going on, and that the channel was probably beginning to undergo a change—that is, that the bank was falling in, but that he considered the channel then west of the island.

We know nothing else with regard to the island until 1839 when Captain Miller passed down the river by the island as a boy of 12 years, and states that at that time the channel was east of the island, although there were two channels at that time. Continuously from that time the channel seems to improve on the left and gradually to leave the west side until in 1846, the channel on the west side is very shallow indeed, and continues thus until some time prior to 1881, when the channel again begins to change to the west, and finally, in 1881 and 1882, it is west of the island where it remains to this day. This change seems to have been in progress for several years.

Mr. LeVasseur has filed a map in this record opposite page 187 showing the shape of the island in 1881, when the channel had about completed its change to the west. The shape of the island is shown in the first black lines to the left of any of the red lines on the map. It is quite remarkable that the shape of the island in 1881 when the channel had changed to the west, should be almost identical with the shape of the island in 1821, as given by Captain Poussin, Captain Young and Lieutenant Tuttle, even to the extent of the sand bar jutting out at the head of the island, and at the foot of the island the similarity is remarkable indeed.

Considering then, the evidence as a whole, we have the following:

1. In 1814, the broadest and best channel at all stages of water and the channel of commerce west of Island 76—Zadoc Cramer.

2. In 1817, the broadest and best channel at all stages of water and the channel of commerce west of Island 76—Zadoc Cramer.

3. In 1818, the broadest and best channel at all stages of the water and the channel of commerce west of Island 76—Zadoc Cramer.

4. In 1821, the only channel west of Island 76—Captain Poussin, Captain Young, and Lieutenant Tuttle, army engineers.

5. In 1827, Mr. McRae, negative evidence of the survey of that year and the failure to sectionize Island 76 as a part of Arkansas indicates channel west of the island.

6. In 1830, Mr. Benj. Griffin sectionized and surveyed Island 76 as a part of the State of Mississippi, giving the distance across the shoot and positively stating the island to be a part of the State of Mississippi.

7. In 1835, Captain Downing's letter.

CONTRA.

1. Captain Miller says, as a boy of 12 years, in 1839 the channel was east of the island and that his father told him that it had been east as far back as 1812.

2. In 1833, "Channel either side. The right is near-

est and the left probably rather deepest''—Cummings' Western Pilot.

Thus, for a series of years extending from 1814 to 1830, inclusive, a period extending over 16 years—all of the official and record evidence introduced in proof and all the old river guides, directions for pilots and historical evidence found by the court, with a unanimity positively startling, place the main channel of the Mississippi River, the channel of greatest width, the channel of greatest depth, the channel of commerce, the channel through which the main volume of the waters of the great river must have flowed, west of Island 76. A unanimity such as this could not be a mere coincidence. It is proof positive and strong, for it is proof coming from different sources and all establishing directly the same fact, without a single break. It is beyond the realms of possibility that such evidence could be false. And thus it would seem that the official survey of Benj. Griffin in October, 1830, though overwhelming in its strength, is corroborated and borne out by all the other evidence of value in the record.

In view of the foregoing, I respectfully petition that the court issue the writ of certiorari and grant a reargument of the case.

Respectfully submitted,

ALEXANDER Y. SCOTT,
Attorney for Appellees.

J. M. MOORE,
CHARLES SCOTT,
E. H. WOODS,
B. W. L. BEDFORD,
Of Counsel.

"APPENDIX A"

APPENDIX

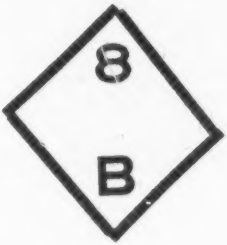
Consisting of Field Notes /8 B/,

Being a Part of Exhibit "B" to

E. H. Nall's Deposition.

EXHIBIT B. DISTRICT OF MISSISSIPPI

FIELD NOTES



Filed
Nov 4– 1905
W. P. Feild
Clerk

Field Notes of Township No. 22 in

Range 8 West in the Choctaw

District. State of Mississippi

Surv'd by

Benjamin Griffin,

Dep. Surv'r.

1 8 3 0

T 22 R 8 W

X Traverse of Island 76 beginning at the upper end.

St.	Course	Dis. Ch lks.
1	S 28–1/2 W	44.
2	S 38–1/2 W	5.
3	S 10–1/2 W	73.
4	S 28–1/2 W	22.
5	S 48–1/2 W	9.
6	S 38–1/2 W	17.
7	S 68–1/2 W	5.
8	S 57–1/2 E	3.
9	N 82–1/2 E	27.
10	N 68–1/2 E	26.
11	N 58–1/2 E	49.

Island 76 is in T 21 R 8 W & not in T22R8W and that instead Sections 6 & 7 Should be Sections 36 & 37 T21R8W

This Island is properly within Township No. 21 in Range 8 West

St.	Course	Dis
12	N 38–1/2 E	32.
13	N 10–1/2 E	25.
14	N 11–1/2 W	20.
15	N 25–1/2 W	25.
16	N 42–1/2 W	27.
17	N 56–1/2 W	12.
18	West W–	7.

Part of the Traverse of Island No. 76 See Note on the last page.

X X X

distance X the Shoot of Island
76 from the beginning of the
last St. N 40 E 2920 intersecting
the opposite traverse 26 ch
on the 1st St.

Note—This attached
piece of paper as
attached to the
original is
3-1/8 inches by
4 inches.

E. H. NALL,
Land Commissioner.

10 N 68-1/2 E 26.

11 N 58-1/2 E 49.

St.	Course	Dis	
12	N 38–1/2 E	32.	
13	N 10–1/2 E	25.	
14	N 11–1/2 W	20.	Part of the Traverse of
15	N 25–1/2 W	25.	Island No. 76 See Note
16	N 42–1/2 W	27.	on the last page.
17	N 56–1/2 W	12.	
18	West	7.	

X X X

at 21 ch set L post — Br Ellum N 1 W 107 lks
trees Gum S 44 W 130 lks

at 31 ch set L post — Br H–berry N 1 W 65 lks
trees Ditto S 69 W 29 lks

at 35 chs left the cain

at 41 ch set L post — Br H–berry N 46 E 28 lks
trees Ditto S 21 W 20 lks

at 51 ch set S post — Br Ellum S 4 E 26 lks
trees H–berry N 13 E 31 lks

Beginning at the S W corner of S 6. we ran S 57 E

at 58.24 Set S post — Br Cotton wood N 68 W 21 lks
tree Ditto N 6 W 13 lks

vines
This line was open woods with & briars, in places above high water mark, overflow from 1 to 4 feet soil good.

Beginning at the S E corner of S 6 we ran N 58-1/2 E. at 12 ch changed the course to N 38–1/2 E

at 7 ch Set L post — Br Cotton N 59 W 9 lks
trees Ditto N 7 W 11 lks

at 23 ch set L post — Br Cottonwood S 45 W 10 lks
trees Willow N 16 W 12 lks

at 32 ch changed the course to N 10–1/2 E

at 3 ch set L Post — Br Cottonwood N 54 W 26 lks
trees Ditto S 86 W 32 lks

at 14 ch set L post — Br Willow S 77 W 9 lks
trees Cottonwood N 30 W 12 lks.

at 25 ch set L post Br Cottonwood N 50 W 9 lks
trees Ditto S 83 W 10 lks

Changed the course to N 11–1/2 W

at 14.50 set L post Br Willow S 33 W 13 lks
trees Ditto N 68 W 25 lks

at 20 ch changed the course to N 25–1/2 W

at 17.50 set L post Br Cottonwood S 59 W 27 lks
trees Ditto S 83 W 24 lks

at 25 ch changed the course to N 42–1/2 W

at 27 ch changed the course to N 56–1/2 W

at 12 ch changed the course to W

at 7 ch closed the S. This line was an
This Island

Open Cottonwood Swamp

The South & East side of this Island is an open Cottonwood Swamp heavy timbered subject to overflow from 1 to 4 feet. Soil generally good

The North and West side is mostly cain above high water mark, soil very good.

37

Beginning at the N. W. corner of #S 7 we ran S 10–1/2 W

at 16 ch set L post Br H–berry N 56 E 16 lks
trees Ditto S 14 E 18 lks

at 22 ch changed the course to S 28–1/2 W

at 22 ch set L post Br Cottonwood S 59 W 27 lks
trees Ash S 83 W 24 lks

Changed the course to S 48–1/2 W

at 9 ch changed the course to S 38–1/2 W

Section 7 should be Section 37 T 21 R 8 W.

at 17 ch changed the course to S 68–1/2 W.
at 5 ch changed the course to S 57–1/2 E
at 3 ch changed the course to N 82–1/2 E
at 27 ch changed the course to N 68–1/2 E
at 20 ch set L post Br Cottonwood N 24 E 4 lks
trees Ditto N 88 E 5 lks
at 26 ch changed the course to N 58–1/2 E
at 21 ch set L post Br Willow N 83 W 34 lks
trees Ditto N 5 E 40 lks
at 37 ch Closed the S.

The traverse around the S is mostly open woods, some cain subject to overflow in many places————

Stiff rich Soil

X X X X X X X X X X X X X X X X X X X X X X X

Finis

T 22 R 8 W.

1 8 3 0

October 30.

I, E. H. Nall, Land Commissioner, and having in my official keeping as such the records of the "Surveyor General's Office" do hereby certify that the above and foregoing pages are a true

and faithful copy and transcript of and from the said record in so far as it is shown and appears of record in Field note book " " of the original surveys now on file and in my official keeping as a part of the record of the State Land Office. The same is a true and correct copy in every line and figure and in strict conformity with the original

Given under my hand and official Seal at Jackson Mississippi this 13 day of May A D 1902

(Seal) E. H. NALL

Land Commissioner.

UNITED STATES OF AMERICA
WESTERN DIVISION OF EASTERN DISTRICT OF ARKANSAS.

I, W. P. Feild, Clerk of the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, in the Eighth Circuit, hereby certify that the foregoing seven pages is a true, correct and compared copy of Exhibit B, designated thus in case of Moore & McFerren v. R. J. McGuire, et al, now on file in my office.

In Witness Whereof, I have hereunto set my hand and the seal of said Court, this 6th day of May A. D. 1907, and of the Independence of the United States of America, the one hundred and thirty-first.

(Seal) W. P. FEILD, Clerk.

Supreme Court of the United States.

No. 222.—October Term, 1906.

William Moore and J. S. McFerren, Partners, doing business under the firm name of Moore & McFerren, Appellants,
vs.
R. J. McGuire, E. H. Woods, E. S. Woods, et al.

Appeal from the Circuit Court of the United States for the Eastern District of Arkansas.

[March 25, 1907.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill to quiet and remove a cloud upon the title to land alleged to be in Arkansas. The Circuit Court found that the land was in Mississippi and dismissed the case for want of jurisdiction. 142 Fed. Rep. 787. The judge made the usual certificate, and an appeal was taken to this Court.

The land in controversy is Island No. 76, formerly called Chapeau Island, in the Mississippi River, and whether it is part of Arkansas or of Mississippi depends, as both parties agree, on what was the western boundary of Mississippi, as established by the Act of Congress admitting that State to the Union. Act of March 1, 1817, c. 23. (3 Stat. 348.) In that Act the State is bounded by a line "beginning on the river Mississippi" and running around the State "to the Mississippi river, thence up the same to the beginning." The plaintiffs contend that these words should be construed to bound the State on the eastern bank of the river, while the defendants maintain that they refer to the middle of the main channel, as it then was. The chief difference is upon the question of fact whether the main channel was to the east or west of the island in 1817, but as the construction of the statute also is in dispute, there is jurisdiction, and *Joy* v. *St. Louis*, 201 U. S. 332, cited by the appellees, does not apply.

We shall assume for the purposes of decision that the boundary is the middle of the main channel as it was in 1817, and address ourselves at once to the chief issue. Some facts are clear. Arkansas was admitted to the Union by Act of Congress of June 15, 1836, c. 100, (5 Stat. 50.) This Act purported, in terms, to bound the new State by the middle of the main channel; that is, of course, as it then was, so that if at that time the channel was on the Mississippi side, the act of the Government imported

an understanding that the boundary of Mississippi went no farther. In 1847, 1848 and 1849 there were purchases of a great part of the island at the United States Land Office in Helena, Arkansas, and certificates and patents were issued by the United States Government. The titles thus created are not attacked, but are said to have been lost by the Mississippi tax sale hereafter mentioned. The small remnant was conveyed by the United States to Arkansas ten years later by a patent under the Swamp Land Act. Arkansas regularly taxed the island as far back as its books are preserved, and presumably before. The above mentioned greater part was forfeited for taxes to the State. Then the State instituted a statutory proceediug to decide whether the forfeiture was valid, and, if not, to collect the taxes by a new sale. A new sale was ordered in due time, made, and the deed approved by the court. The plaintiffs are purchasers from the grantor under this sale and also from grantees of the residue patented under the Swamp Land Act to the State.

Thus it is apparent that Arkansas has exercised dominion over the island from 1847 down to recent times. The State of Mississippi, on the other hand, only recently and since the channel has changed, as we shall state, has attempted to tax it. In 1891 it purported to sell the land for taxes, but the next year the money paid was refunded to the purchaser, on the certificate of the Governor and Attorney General of the State that the land was 'within the limits and the property of the State of Arkansas.' Later, in 1899, the State changed its mind and sold the land for taxes again, the defendants getting their title from this sale, but the possession of Arkansas and the plaintiffs under it has remained. In view of these conditions there may be a doubt whether Courts should go beyond them in a private controversy, rather than leave it to the State of Mississippi, if dissatisfied, to bring a suit in its own name. See *Jones* v. *United States*, 137 U. S. 202. *Foster* v. *Neilson*, 2 Pet. 253. *Filhiol* v. *Torney*, 194 U. S. 356. *Bedel* v. *Loomis*, 11 N. H. 9. *State* v. *Dunwell*, 3 R. I. 127. *State* v. *Wagner*, 61 Me. 178, 184. But, however this may be, the facts stated give us a starting point and raise a presumption which is fortified by some further matters also beyond dispute.

The Court below finds that "ever since 1839, and probably two or three years before that time, up to the year 1881, the main channel was east of the island in controversy, and since 1881 up to the present time west of the island;" the change being due, it seems, to the washing away of the old Napoleon Island, ten miles or so above. There is no serious attempt to cast doubt upon this finding and we deem it correct. In connection with the finding it should be noticed that a Mississippi statute of 1839, repeated in the Code of 1857, p. 64, gives as one boundary of Bolivar County, "thence down the main channel of the said Mississippi," thus

seemingly adopting the channel as it then was, on the Mississippi side, as the true boundary, and furnishing evidence from which we should not lightly depart. In 1849 the island was surveyed and platted as part of Arkansas, and the survey was certified by William Pelham, the Surveyor of Public Lands in Arkansas. The field notes state that the main channel is on the Mississippi side and that the inhabitants of the island vote and pay taxes in Arkansas. They add that the channel or chute on the other side is wide, but in low water very shallow, and that on December 27, 1845, the surveyor got his skiff through with difficulty. This is the most exact and authentic of the surveys produced on either side.

The presumption raised by the facts thus far recited is confirmed by the evidence of an old steamboat captain, whose personal experience went back to 1839. He testified that he learned under his father and brother, and that they instructed him that the channel was on the east side in 1812. He further stated that one of the first wood yards established on the Mississippi River for selling wood to steamers was just above No. 76 on the Mississippi side. Another witness, who lived in the neighborhood in 1839 and after, testified that the channel was considered to be on the east side, that the boats passed directly in front of her house and that they could not pass up the chute on the other side, except in very high water. Having in mind the finding that we have quoted we mention the last testimony only for the indication that it gives of a more or less permanent condition existing at the time when the witness's memory began.

As against this consensus of action on the part of the two States concerned and the United States, this presumption from the establishment of the channel for a time running back nearly or quite to the admission of Arkansas, and this testimony from memory and tradition, the chief reliance of the defendants is upon certain maps and the statement in a letter to which we shall refer. The first and most important of the maps is one of a 'Reconnoissance of the Mississippi and Ohio Rivers,' made during the months of October, November and December, 1821, by two captains and a lieutenant of engineers under the direction of the board of engineers. This exhibits Chapeau Island with a dry sand bar on the Mississippi side, and indicates by dots that the channel is to the west. If the distances are accurate the sand bar at the top approaches pretty near to Mississippi; but in view of the small scale of the map and the absence of measurements there is no sufficient warrant for assuming that the distances are accurate. As to the indication of the channel, it would not be surprising, considering the short time during which the reconnoitre extended, if it had been determined by nothing more than the visible width. But in any event it hardly would do more than confirm a conjecture sug-

gested by other sources which we shall mention, that in some years the western passage was as good as or better than the more permanent one to the east.

The next map is one certified January 22, 1829, of a survey in February, 1827, showing the Arkansas shore sectionized and the island sketched in, with distances indicated at some points, but not sectionized. This map cannot be said to help either side except by speculation of an uncertain sort. The next map, however, is more definite. It is a map of Township 21, Range 8 west, Mississippi, said to be projected from field notes of Benjamin Griffin, also produced, made in January and February, 1830. Here the island is divided up as part of the township, although not sectionized under the United States statutes, and there are other slight indications that the draughtsman regarded the island as belonging to Mississippi. This map is more or less counteracted by another map of the same township signed by Benjamin Griffin, which does not sectionize the island and indicates, if it indicates anything about it, that the channel is on the east side. The field notes in two places speak of 'where the west boundary comes to the river,' and they give the width of the east channel at the top as 2,920 feet. The defendants contend that the first mentioned of these two maps is the completed work, but that hardly can be said to be proved.

In addition to these maps there is some correspondence, &c., from which it appears that the island was selected by Mississippi under the Swamp Land Act, and that after the selection had been approved by the Secretary of the Interior, but before any patent had issued, the island was sold by the State in 1854 to one Ford. In 1859 Ford wrote to the Governor of Mississippi complaining that Arkansas claimed jurisdiction and that the island had been disposed of as public domain within the limits of that State, asking the Governor to claim a patent from Washington and enclosing a letter to the writer, Ford, from one Downing, who is said to have been Surveyor General of Mississippi at an earlier date. This letter is much relied upon. It purports to answer an inquiry as to the island, refers to the survey of 1830 or 1831 and says that at that time, and for some years after, the Island Chute, as it was called, was quite narrow, not over one hundred yards wide about opposite the middle of the island, and that at that time the writer never heard of a steamboat going up or down on the east side. The main river then passed on the west side. The writer adds that he thinks it was in 1835 that he spent some time in examining the land in T. 21, R. 8 W., and that the Island Chute was quite narrow then.

Presumably this letter was written with knowledge of Ford's object, and it hardly can be said to stand on the footing of disinterested tradition. Whether it was admissible or not we need not consider. It was forwarded

to the Department of the Interior by the Governor with Ford's claim. The Commissioner answered the letter, expressing an opinion favorable to Mississippi from inspection of the plats and Downing's statement, and enclosing a similar opinion of a former Commissioner in 1855, also from inspection of the plats. Both letters, however, called for evidence of the condition in 1817, and the later one specifically asked for an affidavit from Downing and another disinterested witness. It was assumed that the land, or most of it, was disposed of, and that the question would be of reimbursement. The affidavits asked for seem not to have been furnished, and nothing more appears to have been done until June 27, 1896. At that date another letter from the Acting Commissioner speaks of the land as having been mostly disposed of before the Swamp Land Act and therefore not granted by it, and suggests the submission of a list containing the 51 acres not so disposed of for approval to Mississippi, giving the Governor sixty days for action. Nothing further was done.

This evidence appears to us insufficient to meet the established facts to which we have referred. It must be admitted to raise a doubt whether the channel has not varied from time to time before the great changes about 1881. This doubt is enhanced by other sources of information not put in evidence but partially referred to by the plaintiffs at the argument. A map in Samuel Cummings's Western Navigator, Philadelphia, 1822, vol. 1, indicates the channel on the Arkansas side, and this is confirmed by the text. Vol. 2, p. 44. In the Navigator, Zadok Cramer, published for a number of years at Pittsburgh for the information of pilots, in 1806 the channel is said to be good on both sides. In 1808 and 1811 it is said that the left (east) side is the best in low water. In 1814, 1817 and 1818, on the other hand, the best channel is said to be on the right side at all stages. We refer to all the years that we have seen. In view of this statement for the very year when Mississippi was admitted, it is impossible not to hesitate, but in Cummings's Western Pilot for 1833 we read "channel either side: the right is nearest, and the left is probably rather deepest," and this seems to us to have been true for the whole time. Upon the whole evidence we are compelled to decide that the plaintiffs have made out their case.

Decree reversed.

Mr. Justice HARLAN agrees with the Circuit Court as to both the facts and the law, and therefore dissents.

Mr. Justice PECKHAM took no part in the decision.